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Federal Communications Commission Record

Volume 5
Issue 5

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iv

Table of Docket Numbers..... vi

Table of Rulemaking Numbers..... vii

Table of Localities..... viii

Table by Subject Matter..... x

Table by Statutory and Rule Provisions..... xiii

Decisions, Reports, Memorandum Opinions, Orders, and Other Selected Material..... 1093

Federal Communications Commission Record

Table of Cases
Volume 5
Issue 5

Case Name	Page
AT&T Communications	1210
AT&T Communications	1238
AT&T Communications	1283
AT&T Communications	1350
AT&T Company v. Southwestern Bell Telephone Co.	1208
AT&T's Electronic Directory Assistance Service	1093
AT&T's Government Outbound Calling Plan	1211
Amendment of Part 2 - Mobile Satellite Services	1255
Amendment of Part 76, Subpart J	1113
Amendment of Part 90 - Short-Spacing of Mobile Radio Systems	1135
Amendment of Part 97 - Amateur Service 80 Meter Band	1276
Amendment of Part 97 - Frequency Changes for Amateur Beacons	1278
Amendment of Parts 2 and 22 - Auxiliary Service Offerings	1138
Amendment of Section 0.461(g)	1316
Amendment of Sections 0.459(a), 0.461(h) and 0.461(i)	1206
Amendments of Parts 94 and 1 - Point-to-Multipoint Operations	1220
American Satellite Company	1186
American Satellite Company and CICI, Inc.	1242
American Telephone and Telegraph Company	1184
Ameritech Operating Companies	1212
Ameritech Operating Companies' Petition for Waiver of Part 69	1240
Atlantic Tele-Network Company	1214
Bangor and Aroostook Railroad Company	1199
Bee, Jr. Benny L.	1280
BellSouth Corporation's Petition for Declaratory Ruling	1317
Benko Broadcasting Company	1301
Big Bay Broadcasting	1294
CR Broadcasting, Inc.	1232
Cable Television Signals	1109
Calumet Radio Dispatch	1196
Carmody, Leo V.	1149
Centel Telephone Company	1307
Cherokee Broadcasting Corporation	1095
Cherokee Broadcasting Corporation (ERRATUM)	1254
Communications Engineering, Inc.	1333
Cost Support Material for 1990 Annual Access Tariffs	1364
Devlin, Peter Joseph and Patricia Eve	1204
Dilucente, Wayne L.	1217
Dri-Five, Inc.	1292
Florence Metronet, Inc.	1178
GTE Spacenet Corporation	1182
GTE Telephone Companies' Request for Waiver	1332

Case Name	Page
General Communication, Inc.	1142
General Electric Company	1335
General Telephone Company of The Southwest	1189
Glab, Thomas	1326
Glab, Thomas	1329
Hubbard, Jack G.	1318
Hubbard, Jack G.	1351
Hubbard, Jack G.	1321
Hubbard, Jack G.	1323
Illinois Consolidated Telephone Company's Petition for Waiver	1094
Investigation of Special Access Tariffs	1306
Investigation of Special Access Tariffs	1349
Local Exchange Carrier's Access Tariff Rate and Earnings Levels	1308
Melchaisedec Broadcasting Company	1129
Modesto Broadcast Group	1143
Morgan, Linda A.	1097
Newburgh Broadcasting Corporation	1250
Osceola Communications, Inc.	1114
Pass Word, Inc.	1180
Phase One Communications, Inc.	1147
Presco Corporation	1337
Price, Ronnie E. and Mildred G.	1339
Radio South Burlington, Inc.	1132
Radiophone Corporation	1243
Revision of Part 15 - Radio Frequency Devices	1110
Roberts Cellular, Inc.	1357
Southwestern Bell Telephone Company's Electronic Directory	1213
St. John, Edward W.	1192
Table of Allotments, FM, Berryville, AR	1342
Table of Allotments, FM, Bon Air, Chester and Mechanicsville, VA	1124
Table of Allotments, FM, Carthage and Webb City, MO	1153
Table of Allotments, FM, Chateaugay, NY	1348
Table of Allotments, FM, Churchville and Luray, VA	1106
Table of Allotments, FM, Conklin, NY	1104
Table of Allotments, FM, Creston, IA	1298
Table of Allotments, FM, Crestview, FL	1296
Table of Allotments, FM, Elko, NV	1341
Table of Allotments, FM, Emporia, Fort Scott and Independence, KS	1116
Table of Allotments, FM, Endwell and Southport, NY	1121
Table of Allotments, FM, Falls City, NE and Red Oak, IA	1299
Table of Allotments, FM, Greenville, TX	1263
Table of Allotments, FM, Grover City, CA	1346
Table of Allotments, FM, Harlem, GA	1295
Table of Allotments, FM, Lompoc, CA	1201
Table of Allotments, FM, Lonoke, AR and Clarksdale, MS	1344
Table of Allotments, FM, Madisonville, TN	1202

Case Name	Page
Table of Allotments, FM, Marathon and Stevens Point, WI	1268
Table of Allotments, FM, McCleary, WA	1272
Table of Allotments, FM, Mirando City, TX	1177
Table of Allotments, FM, Myrtle Beach, SC	1101
Table of Allotments, FM, Osage Beach and Warsaw, MO	1119
Table of Allotments, FM, Portage, WI	1266
Table of Allotments, FM, Red Lodge, MT	1108
Table of Allotments, FM, Rochester, Rushford and Winona, MN	1099
Table of Allotments, FM, Seneca and Streator, IL	1155
Table of Allotments, FM, Spirit Lake, IA	1103
Table of Allotments, FM, Springdale, AR	1241
Table of Allotments, FM, Sullivan and Newton, IL	1203
Table of Allotments, FM, Sulphur, LA	1274
Table of Allotments, FM, Taos, NM	1340
Table of Allotments, FM, West Monroe, LA	1270
Table of Allotments, FM, Windcrest and Hondo, TX	1123
Table of Allotments, TV, Sun Valley, ID	1152
Tri-State Broadcasting Co., Inc.	1156
US West Packet Switching Service	1209
V.O.B. Incorporated	1285
WTG-West, Inc., WTG-East, Inc., and WTG-Central, Inc.	1356
Waters, Susan I.	1252
Winnebago Cooperative	1247
Wrightsville Communications Company, Inc.	1127
Yavapai Telephone Exchange	1353

Table of Cases by Delegated Authority and FCC Number
Volume 5
Issue 5

Delegated Authority or FCC Number	Page	Delegated Authority or FCC Number	Page
DA 90 - 184	1242	DA 90 - 258	1155
DA 90 - 189	1127	DA 90 - 259	1177
DA 90 - 190	1280	DA 90 - 260	1210
DA 90 - 191	1129	DA 90 - 261	1240
DA 90 - 192	1095	DA 90 - 262	1211
DA 90 - 193	1217	DA 90 - 263	1208
DA 90 - 194	1292	DA 90 - 264	1263
DA 90 - 196	1143	DA 90 - 265	1266
DA 90 - 197	1250	DA 90 - 266	1268
DA 90 - 198	1114	DA 90 - 267	1270
DA 90 - 199	1097	DA 90 - 268	1272
DA 90 - 201	1132	DA 90 - 269	1274
DA 90 - 205	1209	DA 90 - 270	1295
DA 90 - 209	1093	DA 90 - 271	1296
DA 90 - 210	1108	DA 90 - 272	1298
DA 90 - 211	1116	DA 90 - 273	1299
DA 90 - 212	1119	DA 90 - 274	1364
DA 90 - 213	1121	DA 90 - 275	1178
DA 90 - 214	1123	DA 90 - 276	1180
DA 90 - 215	1099	DA 90 - 277	1212
DA 90 - 216	1101	DA 90 - 278	1182
DA 90 - 217	1103	DA 90 - 279	1184
DA 90 - 218	1104	DA 90 - 280	1186
DA 90 - 219	1106	DA 90 - 281	1213
DA 90 - 220	1124	DA 90 - 282	1254
DA 90 - 229	1094	DA 90 - 283	1214
DA 90 - 232	1283	DA 90 - 284	1206
DA 90 - 233	1238	DA 90 - 285	1199
DA 90 - 238	1201	DA 90 - 286	1301
DA 90 - 239	1202	DA 90 - 287	1306
DA 90 - 240	1203	DA 90 - 288	1307
DA 90 - 241	1113	DA 90 - 289	1241
DA 90 - 242	1109	DA 90 - 290	1243
DA 90 - 244	1339	DA 90 - 291	1247
DA 90 - 245	1252	DA 90 - 295	1340
DA 90 - 247	1147	DA 90 - 296	1341
DA 90 - 249	1204	DA 90 - 297	1342
DA 90 - 253	1308	DA 90 - 298	1344
DA 90 - 254	1142	DA 90 - 299	1346
DA 90 - 256	1152	DA 90 - 300	1348
DA 90 - 257	1153	DA 90 - 324	1316

Delegated Authority or FCC Number	Page
DA 90 - 325	1317
DA 90 - 332	1318
DA 90 - 333	1351
DA 90 - 334	1321
DA 90 - 335	1323
DA 90 - 336	1326
DA 90 - 337	1329
DA 90 - 339	1332
DA 90 - 341	1333
DA 90 - 342	1335
DA 90 - 343	1337
DA 90 - 344	1357
DA 90 - 346	1350
DA 90 - 350	1349
DA 90 - 351	1353
DA 90 - 353	1356
FCC 90 - 38	1135
FCC 90 - 61	1220
FCC 90 - 63	1255
FCC 90 - 72	1110
FCC 90 - 75	1189
FCC 90 - 76	1138
FCC 90 - 78	1196
FCC 90 - 79	1192
FCC 90 - 80	1149
FCC 90 - 84	1276
FCC 90 - 85	1278
FCC 90 - 87	1294
FCC 90D - 6	1232
FCC 90D - 7	1285
FCC 90R - 8	1156

Federal Communications Commission Record

Table of Cases by Docket Number
Volume 5
Issue 5

Docket Number	Page
CC Dkt.No.85 - 166	1349
CC Dkt.No.90 - 1	1308
GEN Dkt.No.87 - 389	1110
GEN Dkt.No.90 - 56	1255
MM Dkt.No.85 - 355	1156
MM Dkt.No.87 - 421	1294
MM Dkt.No.87 - 474	1241
MM Dkt.No.87 - 590	1121
MM Dkt.No.88 - 123	1346
MM Dkt.No.88 - 138	1109
MM Dkt.No.88 - 166	1104
MM Dkt.No.88 - 522	1285
MM Dkt.No.88 - 523	1232
MM Dkt.No.88 - 572	1101
MM Dkt.No.89 - 70	1155
MM Dkt.No.89 - 72	1201
MM Dkt.No.89 - 95	1106
MM Dkt.No.89 - 101	1348
MM Dkt.No.89 - 109	1152
MM Dkt.No.89 - 110	1295
MM Dkt.No.89 - 124	1202
MM Dkt.No.89 - 125	1108
MM Dkt.No.89 - 174	1299
MM Dkt.No.89 - 301	1153
MM Dkt.No.89 - 306	1341
MM Dkt.No.89 - 315	1103
MM Dkt.No.89 - 317	1340
MM Dkt.No.89 - 318	1123
MM Dkt.No.89 - 321	1099
MM Dkt.No.89 - 348	1177
MM Dkt.No.89 - 480	1203
MM Dkt.No.89 - 485	1298
MM Dkt.No.90 - 58	1114
MM Dkt.No.90 - 59	1250
MM Dkt.No.90 - 61	1127
MM Dkt.No.90 - 62	1217
MM Dkt.No.90 - 63	1132
MM Dkt.No.90 - 65	1116
MM Dkt.No.90 - 66	1119
MM Dkt.No.90 - 67	1124
MM Dkt.No.90 - 68	1143
MM Dkt.No.90 - 69	1097
MM Dkt.No.90 - 71	1095
MM Dkt.No.90 - 72	1280
MM Dkt.No.90 - 74	1292
MM Dkt.No.90 - 75	1129
MM Dkt.No.90 - 79	1147
MM Dkt.No.90 - 80	1204
MM Dkt.No.90 - 81	1252
MM Dkt.No.90 - 82	1339
MM Dkt.No.90 - 85	1263
MM Dkt.No.90 - 86	1266
MM Dkt.No.90 - 87	1268
MM Dkt.No.90 - 88	1270
MM Dkt.No.90 - 89	1272
MM Dkt.No.90 - 90	1274
MM Dkt.No.90 - 91	1296
MM Dkt.No.90 - 104	1342
MM Dkt.No.90 - 105	1344
PR Dkt.No.88 - 191	1220
PR Dkt.No.89 - 65	1278
PR Dkt.No.90 - 34	1135
PR Dkt.No.90 - 100	1276

Federal Communications Commission Record

Table of Cases by Rulemaking Number
Volume 5
Issue 5

Rulemaking Number	Page	Rulemaking Number	Page
RM - 5855	1241	RM - 6692	1123
RM - 5878	1241	RM - 6699	1099
RM - 5915	1241	RM - 6717	1177
RM - 5939	1346	RM - 6736	1153
RM - 6112	1121	RM - 6738	1108
RM - 6233	1121	RM - 6786	1155
RM - 6251	1104	RM - 6942	1298
RM - 6290	1121	RM - 6981	1270
RM - 6459	1255	RM - 7026	1124
RM - 6500	1203	RM - 7036	1099
RM - 6520	1201	RM - 7057	1124
RM - 6564	1101	RM - 7073	1268
RM - 6569	1106	RM - 7086	1116
RM - 6610	1155	RM - 7108	1296
RM - 6639	1295	RM - 7128	1274
RM - 6642	1152	RM - 7129	1272
RM - 6654	1348	RM - 7139	1119
RM - 6662	1103	RM - 7147	1263
RM - 6663	1202	RM - 7155	1266
RM - 6671	1341	RM - 7165	1344
RM - 6672	1153	RM - 7166	1342
RM - 6677	1340	RM - 7246	1142

Table of Cases by City
Volume 5
Issue 5

City/State	Page	City/State	Page
Ankeny, IA	1285	Marathon, WI	1268
Aurora, MO	1241	McCleary, WA	1272
Bakersfield, CA	1280	Mechanicsville, VA	1124
Beebe, AR	1339	Mirando City, TX	1177
Berryville, AR	1342	Modesto, CA	1143
Big Bear City, CA	1129	Mt. Vernon, IL	1232
Bon Air, VA	1124	Myrtle Beach, SC	1101
Cambridge, MD	1294	Nashville, TN	1323
Carthage, MO	1153	Newburgh, IN	1250
Carthage, MO	1241	Newton, IL	1203
Centre, AL	1095	Ocilla, GA	1114
Centre, AL	1254	Osage Beach, MO	1119
Chateaugay, NY	1348	Peoria, IL	1318
Chester, VA	1124	Pine Bluff, AR	1192
Churchville, VA	1106	Portage, WI	1266
Clarksdale, MS	1344	Red Lodge, MT	1108
Conklin, NY	1104	Red Oak, IA	1299
Coral Cove, FL	1217	Roanoke, VA	1337
Creston, IA	1298	Rochester, MN	1099
Crestview, FL	1296	Ruckersville, VA	1124
Elk Mound, WI	1292	Rushford, MN	1099
Elko, NV	1341	Scranton, PA	1097
Emporia, KS	1116	Seattle, WA	1321
Endwell, NY	1121	Seneca, IL	1155
Falls City, NE	1299	Seymour, WI	1204
Florence, SC	1178	South Bend, IN	1351
Fort Bragg, CA	1252	Southport, NY	1121
Fort Scott, KS	1116	Spirit Lake, IA	1103
Greenville, TX	1263	Springdale, AR	1241
Grover City, CA	1346	Stevens Point, WI	1268
Harlem, GA	1295	Streator, IL	1155
Hartford, CT	1326	Sullivan, IL	1203
Hondo, TX	1123	Sulphur, LA	1274
Independence, KS	1116	Sun Valley, ID	1152
Jackson Township, IN	1196	Tallahassee, FL	1329
Lansing, MI	1301	Taos, NM	1340
Las Vegas, NV	1333	Tempe, AZ	1156
Lompoc, CA	1201	Warsaw, MO	1119
Lonoke, AR	1344	Webb City, MO	1153
Luray, VA	1106	West Monroe, LA	1270
Madisionville, TN	1202	Williamsburg, VA	1124
Manchester, TN	1147	Winchester, NH	1132

City/State	Page
Windcrest, TX	1123
Winona, MN	1099
Wrightsville, AR	1127

Subject Index
Volume 5
Issue 5

Subject	Page
Adjudication	
Review Board or Commission Decision	
Auxiliary power	1232
Comparative coverage	1232
Diversification of control of mass media	1232
Integration of ownership into management, quantitative	1232
Amateur Radio Service (ARS)	
ARS - Aliens, operation of station by	
Alien amateur to operate a station in the U.S., permission for an	1276
Broadcast Radio Services - General Rules	
Applications	
Facilities, applications to modify/change control of unbuilt	1301
Changes, renewals in existing stations	
Assignment or transfer of control, procedures for	1301
Construction permits	
Extension/replacement, application for	1301
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of	1116, 1119, 1124, 1099, 1104, 1106, 1155, 1177, 1203, 1241, 1268, 1270, 1295, 1296, 1340, 1341, 1346, 1348
Broadcasting - TV Stations	
Allocations/assignments/licenses	
Table of assignments	1152
Commission Organization	
Delegation of authority - general	
Authority to order/correspond/sign	1238
Delegations of authority - Chief, Common Carrier Bureau	
Limitations on delegated authority	1238, 1356
General information - FCC	
Office hours	1238

Subject	Page
General information - lists containing compiled information	
Authorized broadcast stations and pending applications, lists of	1196
General public information and inspection of records	
Inspection of records not routinely available, request for	1206
Witholding of records from public inspection, requests for	1206
Communications Act of 1934	
Common Carriers	
Complaints to the commission	1242, 1353
Discrimination and preferences	1337
Extension of lines, certificate for	1214
Penal provisions; forfeitures	
Rebates and offsets, forfeitures in cases of	1353
Radio, provisions relating to	
Applications;form of and conditions attached to licenses	1182
Licenses, limitation on holding and transfer of	1335
Domestic Public Fixed Radio Services	
Applications and licenses, filing requirements	
Financial qualification	1199, 1318, 1329
Requirements, general application	1318, 1351, 1326, 1329,
Applications and licenses, processing	
Opposition to applications	1318, 1351, 1326, 1329,
Multipoint distribution service	
Eligible, those common carriers	1318, 1351, 1326, 1329,
Frequencies available for assignment	1318, 1351, 1326, 1329,
Point-to-point microwave radio service	
Frequencies available for assignment	1199
Frequency Allocations and Radio Treaty Matters	
Allocation, assignment, and use of radio frequencies	
International and U.S. table of frequency allocations	1255
Operational-Fixed Microwave Service, Private	
Requirements, general	
Communications permitted	1333
Definitions	1220
Frequencies, policies governing the assignment of	1220
Shared use of facilities with a common carrier	1189

Subject	Page
Practice and Procedure	
Common carriers: complaints	
Formal or informal	1208
Common carriers: complaints, informal	
Form	1353
Procedure	1353
Common carriers: tariffs	
Filing, petitions related to new	1093
Fees filed with Commission: schedules: general information	
Private radio services	1294
Information, general	
Time, computation of	1211
Reconsideration/review of Commission action	
Actions by delegated authority, application for review of	1192, 1211
Review and deferred consideration of application	1192
Rulemaking proceedings: petitions	
Responses and replies	1142
Private Land Mobile Radio Services	
Industrial radio services	
Business radio service, table of and reference coordinates for	1180
Licensing/use of frequencies in 806-821, 851-866 MHz bands	
Frequencies, selection and assignment and table of	1135
Policies governing the assignment of frequencies	
Facilities, sharing the use of	1180
Public Mobile Service	
Applications and licenses-filing requirements	
Amendment of applications	1149, 1243
Defective applications	1243
Technical content of applications	1192
Applications and licenses-processing	
Mutually exclusive applications	1196, 1149
Domestic public cellular radio telecommunications service	
Applications, contents and form of	1192
Service areas	1178, 1243
Satellite Communications	
Technical standards	
Frequencies and orbital location assignments	1182
Tariffs (Schedules of Rates and Regulations)	
Rules, general	
Letters of transmittal: supporting information to be submitted	1210

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
(Annetta Covany d/b/a Melchaisedec B/casting Company)(Big Be	1129
(Benny L. Bee, Jr.) (Bakersfield, California)	1280
(Cherokee Broadcasting Corporation) (Centre, Alabama)	1095
(Cherokee Broadcasting Corporation) (Centre, Alabama)	1254
(Dri-Five, Inc.) (Elk Mound, Wisconsin)	1292
(Linda A. Morgan) (Scranton, Pennsylvania)	1097
(Modesto Broadcast Group) (Modesto, California)	1143
(Newburgh Broadcasting Corporation) (Newburgh, Indiana)	1250
(Osceola Communications, Inc.) (Ocilla, Georgia)	1114
(Peter Joseph Devlin and Patricia Eve Devlin) (Seymour, Wisc	1204
(Phase One Communications, Inc.)(Manchester, Tennessee)	1147
(Radio South Burlington, Inc.) (Winchester, New Hampshire)	1132
(Ronnie E. and Mildred G. Price)(Beebe, Arkansas)	1339
(Susan I. Waters)(Fort Bragg, California)	1252
(Wayne L. Dilucente) (Coral Cove, Florida)	1217
(Wrightsville Communications Company, Inc.) (Wrightsville, A	1127
000.047 C.F.R. § 1.51(c), Number of copies of pleadings, br	1209
000.047 C.F.R. § 64.702	1213
000.047 C.F.R. §§ 1.4, 1.115	1211
000.047 C.F.R. §§ 201(b) and 202(a)	1350
000.047 U.S.C. § 205(a) Prescription	1308
000.291 Authority Delegated	1356
000.434(e) Data bases and lists of authorized braodcast stat	1196
000.459(g) Requests that Materials on Information Submitted	1206
000.461 Requests for inspection of materials not routinely	1316
000.461(h) & (i) Requests that inspection of materials not	1206
001.104(b) Preserving the right of review	1192
001.115 Application for review	1294
001.115(d) Application for review of action taken pursuant t	1192
001.401 Petitions for Rule Making	1317
001.405 Responses to Petitions; Replies	1142
001.711 Formal or Informal complaints	1208
001.716 Informal Complaints, Form	1353
001.717 Informal Complaints, Procedure	1353
001.773(a)(2)(ii) late-filed petition	1093
002.106 Table of Frequency Allocations	1255
021.013(a) Real-party-in-interest rule	1318
021.013(a) Real-party-in-interest rule	1321
021.013(a) Real-party-in-interest rule	1323
021.013(a) Real-party-in-interest rule	1326
021.013(a) Real-party-in-interest rule	1329
021.013(a) Real-party-in-interest rule	1337
021.013(a) Real-party-in-interest rule	1351
021.017 Certification of financial qualifications	1318
021.017 Certification of financial qualifications	1323
021.017 Certification of financial qualifications	1326
021.017 Certification of financial qualifications	1329
021.017 Waiver of rules	1199
021.030 Opposition to Applications	1318
021.030 Opposition to Applications	1321

021.030 Opposition to Applications 1323
021.030 Opposition to Applications 1326
021.030 Opposition to Applications 1329
021.030 Opposition to Applications 1337
021.030 Opposition to Applications 1351
021.701(c) Frequencies 1199
021.900 Eligibility 1318
021.900 Eligibility 1321
021.900 Eligibility 1323
021.900 Eligibility 1326
021.900 Eligibility 1329
021.900 Eligibility 1337
021.900 Eligibility 1351
021.901(d)(2) One-to-a-market rule 1318
021.901(d)(2) One-to-a-market rule 1321
021.901(d)(2) One-to-a-market rule 1323
021.901(d)(2) One-to-a-market rule 1326
021.901(d)(2) One-to-a-market rule 1329
021.901(d)(2) One-to-a-market rule 1337
021.901(d)(2) One-to-a-market rule 1351
022.015 Technical content of applications. 1357
022.015(c)(i)(2) FAA notification 1192
022.020 Defective applications 1243
022.020 Defective applications 1247
022.020 Defective applications 1357
022.023 Amendment of applications 1149
022.023(a) Amendment of applications 1243
022.023(a) Amendment of applications 1247
022.025 Application for temporary authorizations. 1357
022.031(b) Mutually exclusive applications 1196
022.031(b)(2)(i) Mutually exclusive applications 1149
022.903(a) Cellular System service areas 1243
022.903(a) Cellular system service areas. 1178
022.903(a) Cellular System service areas. 1247
022.911. Permissible communications. 1138
022.913(b) Forms of applications 1192
022.923(a) Content and form of Rural Service Area applicatio 1243
022.923(a) Content and form of Rural Service Area applicatio 1247
025.202(d) Frequencies 1182
032.2000 Instructions for Telecommunications Plant Accounts 1332
047.000 C.F.R. § 0.291, Authority Delegated (Chief, Common 1238
047.000 U.S.C. § 202(a); unsatisfactory turnkey aspect 1283
047.000 U.S.C. § 204(a), Hearing As To Lawfulness of New Ch 1238
047.000 U.S.C. § 403, Inquiry By Commission On Its Own Moti 1238
047.000 USC 405 Reconsiderations 1192
061.038 Supporting information to be submitted 1210
061.040 Private line rate structure guidelines 1210
073.202 FM Table of Allotments 1099
073.202 FM Table of Allotments 1106
073.202 FM Table of Allotments 1108
073.202 FM Table of Allotments 1116
073.202 FM Table of Allotments 1119
073.202 FM Table of Allotments 1123
073.202 FM Table of Allotments 1124

073.202 FM Table of Allotments 1153
073.202 FM Table of Allotments 1155
073.202 FM Table of Allotments 1177
073.202 FM Table of Allotments 1201
073.202 FM Table of Allotments 1202
073.202 FM Table of Allotments 1203
073.202 FM Table of Allotments 1241
073.202 FM Table of Allotments 1263
073.202 FM Table of Allotments 1266
073.202 FM Table of Allotments 1268
073.202 FM Table of Allotments 1270
073.202 FM Table of Allotments 1272
073.202 FM Table of Allotments 1274
073.202 FM Table of Allotments 1295
073.202 FM Table of Allotments 1296
073.202 FM Table of Allotments 1342
073.202 FM Table of Allotments 1344
073.202 FM Table of Allotments 1346
073.202, FM Table of Allotments 1101
073.202, FM Table of Allotments 1103
073.202, FM Table of Allotments 1104
073.202, FM Table of Allotments 1121
073.202, FM Table of Allotments 1298
073.202, FM Table of Allotments 1299
073.202, FM Table of Allotments 1340
073.202, FM Table of Allotments 1341
073.202, FM Table of Allotments 1348
073.3534 Application for extension of construction permit or 1301
073.3535 Application to modify authorized but unbuilt facili 1301
073.3597 Procedures on transfer and assignment applications 1301
073.606 TV Table of Allotments 1152
090.075 Business Radio Service 1180
090.179 Shared Use of radio stations in the frequency bands 1180
090.621 Selection and assignment of frequencies 1135
094.003 Definitions 1220
094.009(b)(1) Permissibility of communications 1333
094.015 Policy governing the assignment of frequencies 1220
094.017(a) Shared use of radio stations and the offering of 1189
097.203 Beacon stations 1278
097.301 Authorized frequency bands 1276
22.930. Special Provisions for Alternative Cell. Tech. & Aux 1138
300.202(a) Discrimination and Preferences 1337
300.204 Hearing as to lawfulness of new charges 1349
300.208 Complaints to the Commission 1242
300.208 Complaints to the Commission 1353
300.214 Extension of Lines 1214
300.309 Action Upon Applications 1182
300.310 Limitation on Holding and Transfer of Licenses 1335
300.503 Forfeitures 1353
500.140 Comparative 1285
500.2035 Integration of Ownership into Management, Qualitati 1232
500.2045 Diversification of Control of Mass Media 1232
500.2055 Auxiliary Power 1232
500.2065 Comparative Coverage 1232

500.3125 Misrepresentation and Lack of Candor 1156
LECs Ann. Access Tarf. Filings; Secs. 61.38, 32.11(a) and 32 1364
MO&O examines replies 1308
NAL, Yavapai Telephone, DA 90-351 1353
Part 25, Satellite Communications 1184
Part 25, Satellite Communications 1186
Pet. for Susp. or Rej. 1212
To est. Operator Transfer Service; new rate element 1240
Waiv. of Part 69 to est. proposed Optional ADA Services 1094

1156
1364
1308
1353
1184
1186
1212
1240
1094

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — Transmittal No. 1941

Revisions to Tariff F.C.C. No. 4

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 1990; Released: February 14, 1990

By the Chief, Common Carrier Bureau:

1. In Transmittal No. 1941, AT&T introduces Electronic Directory Assistance Service (EDA), a new offering that allows customers to obtain direct access, through a personal computer, to the directory assistance databases of the local exchange carriers (LECs), without the use of LEC operators. AT&T proposes to furnish unformatted directory information, one screen at a time, transmitted without alteration as received from the LECs. Two forms of EDA are proposed: Type 1 EDA is accessible via an access line and ACCUNET Packet Service Port (software purchased by the customer from AT&T); Type 2 EDA is available to customers through a LEC's public packet switched data network that is available with Domestic Internetworking Service. A combined customer identification code/password, provided by AT&T, is required in order to access EDA. AT&T maintains that this number is proprietary. *See* AT&T Transmittal No. 1941, Description and Justification, at 3.

2. Transmittal 1941 also introduces a nationwide promotion, by which terms AT&T will waive the EDA monthly subscription charge through April 30, 1990 and the nonrecurring charge for the customer identification code/password for customers who subscribe to EDA between January 18, 1990 and April 16, 1990.

3. On January 18, 1990, the Times Journal Company (Times Journal) filed a petition to suspend and investigate Transmittal 1941. Times Journal also requests that the Commission seek comments from the Federal Trade Commission and the Department of Justice so that full consideration may be given to the alleged impact this tariff will have on the marketplace. Times Journal Petition at 9. Finally, Times Journal requests a "waiver from the deadline to filing opposition to the proposed tariff," or alternatively, requests that the petition "be entered as a comment into the public record for this proceeding." *Id.* at 1.

4. AT&T filed a reply to the above petition on January 26, 1990. On February 1, 1990, Times Journal filed a motion for leave to file out of time to file a response to AT&T's reply, and on February 5, 1990 filed affidavits in connection with this motion.[1] On February 7, 1990, AT&T filed an opposition to the Times Journal motion and its accompanying affidavits, arguing essentially that Times Journal's contention that the motion and response should be accepted because Times Journal was unaware of Transmittal 1941 affords "no basis whatsoever" for the Commission to consider Times Journal's response to AT&T's reply. Additionally, AT&T asserts, Times Journal reargues the claims raised in its January 17, 1990 petition. AT&T Opposition at 1-3.

5. Pursuant to Section 1.773(a)(2)(ii) of the Commission's Rules, petitions against Transmittal No. 1941, which was filed on December 4, 1989, on 45 days' notice, were due to be filed by December 19, 1989. Times Journal's petition, not filed until January 17, 1990, is more than 40 days late. Times Journal proffers no persuasive explanation for this delay. Accordingly, the petition to suspend and investigate filed by Times Journal shall be dismissed as untimely.

6. Accordingly, IT IS ORDERED, that the petition to suspend and investigate AT&T Tariff F.C.C. No. 4, Transmittal No. 1941, filed on January 17, 1990 by the Times Journal Company, IS DISMISSED.

7. IT IS FURTHER ORDERED, that the motion for leave to file out of time filed on February 1, 1990, by the Times Journal Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Pursuant to 47 C.F.R. Section 1.45(c), Times Journal's February 1, 1990 motion and the accompanying affidavits filed on February 5, 1990 are unauthorized and are denied.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 20, 1990

ILLINOIS CONSOLIDATED TELEPHONE COMPANY FILES PETITION FOR WAIVER OF PART 69 TO ESTABLISH OPTIONAL ABBREVIATED DIALING ARRANGEMENT

Pleading Cycle Established

On January 12, 1990, Illinois Consolidated Telephone Company (ICTC) filed a petition for waiver of Sections 61.38 and 69.113 of the Commission's Rules, 47 C.F.R. §§ 61.38, 69.113, in order to implement an optional Abbreviated Dialing Arrangement (ADA) services at rates other than non-premium in its digital switch end offices. On the same date, ICTC filed Transmittal No. 44 proposing to provide ADA. This service would permit ICTC to provide end users served from a non-equal access end office with the capability to access their interexchange carrier of choice by dialing a single or double digit code, other than "1", chosen from available numbers.

Interested parties should file comments regarding the ICTC waiver petition no later than March 22, 1990. Reply comments should be filed no later than April 6, 1990. Although we recognize that the statutory period for filing petitions against Transmittal No. 44 has passed, we may establish a pleading cycle with respect to the tariff by a subsequent Public Notice after completion of the pleading cycle established in this Public Notice.

Parties are requested to furnish copies of their pleadings to International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of the Illinois Consolidated Telephone Companies' waiver petition, along with other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W. An original and four copies of all pleadings and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules. In addition, one copy of each pleading must be filed with ITS.

For further information, contact Terry S. Conway, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-71

In re Applications of

CHEROKEE BROADCASTING CORPORATION (hereafter "Cherokee")	File No. BPH-880204MJ
RADIO CENTRE, INC. (hereafter "RCI")	File No. BPH-880209MF
BAKER ENTERPRISES, INC. (hereafter "Baker")	File No. BPH-880210MO

For Construction Permit for a New commercial FM Station on Channel 219A in Centre, Alabama

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 26, 1990

1. The Commission has before it the above-captioned mutually exclusive applications for a new commercial FM station.

2. *EEO.* The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Cherokee has filed such a statement, it is deficient. Cherokee has not listed any recruitment organizations which will be consulted to achieve the Commission's EEO objectives. Accordingly, Cherokee will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

3. *Air Hazard.* Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Baker have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Baker would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. *Financial.* RCI has certified that it is financially qualified to construct and operate its proposed facility for 3 months without revenue. However, RCI has qualified its certification by stating that "[f]inancing plans are being formulated; an amendment will be filed when they are completed." No such amendment has been filed to date. Given the ambiguity in RCI's response to the financial qualifications section of FCC Form 301, an issue is appropriate in order for RCI to demonstrate its financial qualifications at hearing. Accordingly, an issue will be specified below.

5. *Areas & Populations.* Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Baker would constitute a hazard to air navigation.

2. To determine, with respect to RCI, if the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Cherokee shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

9. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

10. IT IS FURTHER ORDERED, That in addition to the copy serve on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be serve on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-69

In re Applications of

LINDA A. MORGAN (hereafter "Morgan") File No. BPH-880113MB

UNIVERSITY OF SCRANTON (hereafter "University") File No. BPED-880114MB

RALPH J. LOMMA (hereafter "Lomma") File No. BPH-880114NF

For Construction Permit for a New FM Station on Channel 258A, Scranton, Pennsylvania

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. The engineering data submitted by Morgan does not clearly demonstrate that it provides a 3.16 mV/m signal to the entire proposed city of license, as required by Section 73.315(a) of the Commission's Rules. However, the FM Branch does not require waiver of this requirement unless the proposed 3.16 mV/m coverage falls below 80% of the area of the principal community. *See John R. Hughes*, 50 Fed. Reg. 5679 (February 11, 1985). *See also Southwest Communications, Inc.*, released July 16, 1986 (letter from the Chief, FM Branch, reference 8920-HVT). Engineering study reveals that Morgan's 3.16 mV/m contour is in substantial compliance with this requirement in that her contour would cover approximately 87% of Scranton. Accordingly, the waiver request filed by Morgan will be dismissed as moot.

3. *Morgan & Lomma*. Morgan and Lomma each propose to locate their respective antennae on the existing WOLF-TV, Scranton, Pennsylvania tower. Morgan's proposal specifies a site elevation of 620.3 meters above mean sea level (AMSL), and tower heights of 114.9 meters above ground level (AGL) and 735.2 meters AMSL. Lomma specifies a site elevation of 628 meters AMSL, a tower height of 123 meters AGL, and a tower height AMSL of 750 meters for this structure. However, Commission records (*See* WOLF-TV license file no. BLCT-870831KF) list the site elevation as 628 meters, with the tower heights AGL/AMSL as 115 meters/743 meters, respectively. Because these applicants clearly propose to locate on an existing tower of a Commission licensee, and because specific reference is made to this tower in various places in the applications in question, the staff could, "drawing on the applications as a whole," confidently verify the transmitter site location by taking official notice of the site coordinates and tower heights as found in the Commission's files for the existing facility. Accordingly, the applications of Lomma and Morgan are acceptable for filing; however, corrective amendments must be filed to each of these applications within 30 days of the release of this Order.

4. *Environmental*. Our staff's engineering study indicates that the operation of the Morgan and Lomma proposals, when considered with the effects of co-located TV stations WOLF-TV and FM translator W206AB, may significantly exceed the radio frequency radiation guidelines under 47 C.F.R. § 1.1307(b). Accordingly, Morgan and Lomma are required to amend their applications within thirty days of the date of this Order to demonstrate compliance with the RF radiation guidelines. The cumulative effect of the proposed operations and all nearby RF sources must be considered. Since the proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, Morgan and Lomma are required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Morgan and Lomma will be required to file, within thirty days the release of this Order, an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. University petitioned for leave to amend its application on June 22, 1989 and on August 11, 1989. The accompanying amendments were filed after March 23, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Morgan and Lomma in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1.1319 of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That Morgan's request for Waiver of 47 C.F.R. § 315(a) IS DISMISSED AS MOOT.

9. IT IS FURTHER ORDERED, That Morgan and Lomma shall submit the amendments specified in paragraph 3 above to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Morgan and Lomma shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge with a copy to the Chief, Audio Services Division.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed University ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-321

In the Matter of

Amendment of Section 73.202(b),	RM-6699
Table of Allotments,	RM-7036
FM Broadcast Stations.	
(Rochester, Winona and	
Rushford, Minnesota)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. In response to a petition filed by Rochester Communications Corporation (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 5641 (1989), seeking the substitution of FM Channel 269C2 for Channel 269A at Rochester, Minnesota. Petitioner also requests modification of its license for Station KRCH, to specify operation on Channel 269C2. In response to the *Notice*, Howard G. Bill (Bill) filed a counterproposal.[2] Petitioner and Decorah Radio, Inc. filed comments supporting the allotment of Channel 269C2 at Rochester. Bill and petitioner filed reply comments.

2. Bill's counterproposal requests the allotment of Channel 266A to Rushford, Minnesota, to provide the community with its first local service. Bill stated his intention to file an application for Channel 266A at Rushford.

3. In reply comments, Bill urges the Commission to retain Channel 268A at Winona, Minnesota, deny the substitution of Channel 269C2 for Channel 269A at Rochester, and instead allot Channel 266A to Rushford, Minnesota. According to Bill, Rushford is a thriving farm, business and manufacturing community crossed by a network of state highways providing access to many recreational activities such as hunting, fishing, camping and skiing. Bill notes that allotment of an FM channel to Rushford would provide the community and surrounding area with local news, weather and sports programming.

4. Petitioner, in reply comments, continues to support the substitution of Channel 269C2 for Channel 269A at Rochester and Channel 266A for vacant Channel 268A at Winona. In response to the counterproposal filed by Bill, petitioner suggests the allotment of Channel 257A to Rushford instead of Channel 266A. Petitioner notes that such action would provide the greatest possible amount of new FM service, giving Rushford its first FM allotment while providing improved service in the Rochester area.

5. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of FM Channel 269C2 for Channel 269A at Rochester, Minnesota. Channel 269C2 can be allotted to Rochester in compliance with the Commission's spacing requirements provided vacant Channel 268A is deleted at Winona, Minnesota. [3] Channel 266A can be substituted for Channel 268A at Winona in compliance with the Commission's spacing requirements.[4] In accordance with Section 1.420(g) of the Rules, we shall modify the license of Station KRCH to specify operation on Channel 269C2 in lieu of Channel 269A. In response to the counterproposal, we believe it would be in the public interest to allot a channel to Rushford. A staff analysis confirms that Channel 257A can be allotted to Rushford, Minnesota, in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[5]

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Rochester, Minnesota	243C2, 248C, 269C2, 295C
Rushford, Minnesota	257A
Winona, Minnesota	237A, 266A

7. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KRCH, Rochester, Minnesota, IS MODIFIED TO SPECIFY operation on Channel 269C2, in lieu of Channel 269A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. The window period for filing applications for Channel 257A at Rushford, Minnesota, and Channel 266A at Winona, Minnesota, will open on **April 13, 1990,** and close on **May 14, 1990.** [6]

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Rushford has been added to the caption.

[2] Public Notice of the Counterproposal was given on September 25, 1989, Report No. 1797 (RM-7036).

[3] The coordinates for Channel 269C2 at Rochester are 44-04-13 and 92-28-38.

[4] The coordinates for Channel 266A at Winona are 44-04-09 and 91-30-54.

[5] The coordinates for Channel 257 at Rushford are 43-48-42 and 91-45-30.

[6] As indicated in the *Notice*, the filing window dates for Channel 268A at Winona have been withheld pending the licensing of Station KDWB, Richfield, Minnesota. With the substitution of channels, it is now possible to open the filing window since Channel 266A is not a contingent allotment. Because the petitions which resulted in the Rochester, Rushford and Winona allotments were filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-572

In the Matter of

Amendment of Section 73.202(b), RM-6564
Table of Allotments,
FM Broadcast Stations.
(Myrtle Beach, South Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. At the request of Hirsh Broadcasting Group, Inc. L.P. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 7269 (1988), proposing the substitution of Channel 221C2 for Channel 221A at Myrtle Beach, South Carolina, and the modification of its license for Station WJYR-FM to specify operation on the higher powered channel.[1] Petitioner, Myrtle Beach Broadcasting Limited Partnership ("Myrtle Beach Broadcasting"), and Fayetteville State University ("FSU"), licensee of Station WFSS-FM, Fayetteville, North Carolina, filed comments. Hirsh filed reply comments.

2. Petitioner states that it will apply for Channel 221C2, if allotted to Myrtle Beach. As stated in the *Notice*, adoption of the petitioner's proposal would result in the overlap of Channel 221C2's 1 mV/m contour and the Grade B contour of Station WECT(TV), Channel 6, Wilmington, North Carolina. Myrtle Beach Broadcasting provided in its petition for rule making an engineering study demonstrating the impact on the availability of noncommercial educational stations on Channels 218, 219 and 220 if Channel 221C2 were allotted to Myrtle Beach. However, we requested that the study be supplemented based on the guidelines set forth in the *Notice*. In response, petitioner has shown that the allotment of Channel 221C2 to Myrtle Beach will not cause any significant impact on existing or future noncommercial educational service in the area.

3. As stated in the *Notice*, the allotment at Myrtle Beach conflicts with the pending application of FSU to amend Station WFSS's outstanding construction permit from Channel 206C1 to Channel 220C1 (BPED-860811MF) since the two communities are located approximately 151 kilometers apart while the Commission's Rules stipulate a 158 kilometer separation between first adjacent Class C1 and C2 allotments. FSU opposes the allotment at Myrtle Beach, stating that its application to operate on Channel 220C1 was filed "due to television Channel 6 concerns involving WECT(TV), Wilmington, North Carolina." It states that the application was the result of an agreement between Station WFSS and WECT to resolve the Channel 6 interference concerns while also permitting a significant cost savings to FSU since no change in transmitter site was required. FSU is hopeful that Commission actions permitting the use of short-spaced antennas will obviate the conflict. However, until such time as it is allowed to operate with a short-spaced antenna, FSU argues that the rule making proposal cannot be granted. FSU contends that it is entitled to protection as a cut-off applicant.

4. We believe the public interest would be served by substituting Channel 221C2 for Channel 221A at Myrtle Beach, South Carolina, since it could enable Station WJYR-FM to expand its coverage area, thus providing a larger population with additional service. Channel 221C2 can be allotted to Myrtle Beach in compliance with the Commission's minimum distance separation requirements and can be used at Station WJYR's present transmitter site.[2] We disagree with FSU that its application should be preferred since it has been granted cut-off status. As is well established Commission policy, rule making proposals seeking changes to the FM Table of Allotments that would provide substantial service benefits are generally preferred over minor modification applications since the application represents only a preference for a particular transmitter site. *See, Andalusia, Alabama*, 49 FR 32201, August 13, 1984, *Las Vegas, Nevada*, 51 FR 9453, March 19, 1986. We find that FSU has not presented any reason to consider the transmitter site proposed in its application to be anything more than a mere preference. FSU only states that use of the site specified in its application represents a monetary savings since it reflects use of its present transmitter site. Accordingly, FSU will be required to amend its application, to the extent necessary, to comply with our interference protection rules.[3]

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Myrtle Beach, South Carolina	221C2, 269C2

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Myrtle Beach Broadcasting Limited Partnership, for Station WJYR-FM, Myrtle Beach, South Carolina, IS MODIFIED to specify operation on Channel 221C2, in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice* was issued at the request of Myrtle Beach Broadcasting Limited Partnership. However, subsequent to the issuance of the *Notice*, the license for Station WJYR-FM was assigned to Hirsh Broadcasting Group, L.P. In light of the filings by Hirsh, the essentially identical comments of Myrtle Beach Broadcasting need not be discussed.

[2] The coordinates for this allotment are North Latitude 33-42-56 and West Longitude 78-52-56.

[3] We note that FSU's application specifies a directional antenna in the direction of Myrtle Beach in order to avoid a short-spacing to pending applications for Channel 220C2 at Monroe and Wingate, North Carolina. Use of the proposed directional antenna appears to negate any interference problem between Channel 221C2 at Myrtle Beach and Channel 220C1 at Fayetteville. The Commission has amended its rules to permit the use of directional antennas in short-spacing situations between noncommercial and commercial stations where, as here, the distance does not exceed 8 kilometers (5 miles). *See, Amendment of Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 4 FCC Rcd 1681 (1989). Therefore, it may be unnecessary to further modify the facilities proposed in its application.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-315

In the Matter of

Amendment of Section 73.202(b), RM-6662
Table of Allotments,
FM Broadcast Stations.
(Spirit Lake, Iowa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. At the request of Campus Radio Company, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 5613 (1989), proposing the substitution of Channel 280C2 for Channel 280A at Spirit Lake, Iowa, and the modification of its license for Station KUOO(FM) to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest will be served by substituting Channel 280C2 for Channel 280A at Spirit Lake, Iowa, since it could enable Station KUOO(FM) to expand its coverage area. Channel 280C2 can be allotted to Spirit Lake in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site.[1] As proposed, we will also modify petitioner's license for Station KUOO(FM) to specify operation on Channel 280C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Spirit Lake, Iowa	280C2

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Campus Radio Company, Inc., for Station KUOO(FM), Spirit Lake, Iowa, IS MODIFIED to specify operation on Channel 280C2, in lieu of Channel 280A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 43-23-42 and West Longitude 95-06-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-166

In the Matter of

Amendment of Section 73.202(b), RM-6251
Table of Allotments,
FM Broadcast Stations.
(Conklin, New York)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. At the request of Programmed Communications, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2254 (1988), proposing the allotment of Channel 227A to Conklin, New York, as the community's first local FM service. Petitioner and Kevin M. Fitzgerald ("Fitzgerald") filed comments. Petitioner filed reply comments.

2. Petitioner reiterates its intention to apply for the channel, if allotted to Conklin. Fitzgerald states that he does not intend to apply for the channel. However, he expresses confusion over the actual location of the proposed allotment. He states that petitioner requested the allotment to Conklin, described as an incorporated town with a population of 6,204 persons. However, Fitzgerald submits that the engineering showing accompanying the petition actually shows a location comprised of a small group of homes with a population of only 150 persons. He also states that the Commission's reference coordinates and the U.S. Department of Interior's coordinates for Conklin are incorrect, contending that they are not the coordinates for the Conklin Post Office. Fitzgerald acknowledges that Conklin presently has no FM channel allotted to it. However, he argues that noncommercial educational Stations WSKG-TV and WSKG-FM have their main studios in Conklin and provide public service programming beyond that required of a local commercial station. Further, he claims that Conklin receives 70 dBu service from Binghampton's commercial stations (3 AM, 2 FM and 3 TV). Therefore, Fitzgerald believes that the public interest would be better served by allotting Channel 227A to other unnamed communities.

3. Fitzgerald also raises questions as to whether Channel 227A could provide 70 dBu service to all of Conklin, as required by Section 73.315 of the Commission's Rules. He states that a serious terrain obstruction lies between the major populated area of Conklin and the transmitter site identified in the *Notice*. This terrain obstruction, coupled with the 5.5 kilometer southwest site restriction, accordingly to Fitzgerald, so limits site selection as to make it very difficult to find a location that complies with the Commission's minimum distance separation requirements and also provide line-of sight service to Conklin. Fitzgerald also contends that a Channel 227A allotment at Conklin could experience interference problems from Station WNTQ at Syracuse, New York. He submits that while the Commission considers the station to be a Class B, it is, in actuality, a Class C1, with grandfathered facilities of 97 kW at 201 meters HAAT. He claims that listeners in the vicinity of the Conklin Post Office are easily able to receive Station WNTQ. Finally, he suggests that Channel 294A be allotted to Conklin should the Commission ultimately determine that an allotment should be made. Fitzgerald states that the necessary site restriction would place the transmitter where most of the population resides and would enable 70 dBu service to all of Conklin.

4. In reply, petitioner urges that Channel 227A be allotted to Conklin. It states that the coordinates specified in the *Notice* are correct, reflecting the site restriction, not the center of city. Further, it reiterates its intention that the allotment be made to the Town of Conklin, as described in its petition for rule making. Petitioner also disputes Fitzgerald's contention that Conklin already is well served. It acknowledges that the allotment would not provide the community with its first aural service. However, it argues that the obligation of a licensee to its community of license are different from those of a licensee who provides service to outlying areas. Further, petitioner submits that the fact that Station WSGK-FM may have its studio in Conklin is also irrelevant, since it is not licensed to the community and provides a noncommercial educational service. It contends that the Commission has found the provision of a first local commercial service to be in the public interest, citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

5. Petitioner also disputes Fitzgerald's claims that Channel 227A is a technically inferior allotment. It provides an engineering study purporting to demonstrate that the channel can be sited so as to provide 70 dBu service to all of Conklin. It states that the coordinates specified in the *Notice* are not the only viable coordinates, but merely proposed allotment coordinates. In this regard, petitioner argues that there are several sites which can provide the required unobstructed signal to the community. Further, it states that there is no interference problem with regard to Station WNTQ at Syracuse because the Commission imposed the site restriction on the Conklin allotment in order to avoid such interference. Petitioner points out that Section 73.209(b) of the Commission's Rules stipulates that interference protection to stations operating on commercial channels is limited to that which results from the distance separation requirements. It contends that Station WNTQ is correctly considered by the Commission to be a Class B facility and not a Class C1, as argued by Fitzgerald. It is grandfathered at facilities below that of a Class C1 and cannot increase its 1 mV/m contour in any direction. Thus, the station is foreclosed from achieving Class C1 equivalent contours. Finally, petitioner submits that adoption of Fitzgerald's proposal to allot Channel 294A to Conklin would constitute an inferior allotment. It states that the main transmitter site proposed by Fitzgerald is on the side of a very steep mountain, severely restricting the construction of an antenna tower. It states that the antenna cannot be moved to the top of the mountain since it would result in a short-spacing to Station WPCX at Auburn, New York. It concludes that such

a major obstruction in the near field can cause reflections and consequent multipath problems. Another of Fitzgerald's sites is at river bed level, thus limiting the coverage potential of the station. Therefore, petitioner urges that Channel 227A and not Channel 294A be allotted to Conklin.

6. We believe the public interest would be served by allotting a channel to Conklin, New York, since it could provide the community with its first local FM service. We find Fitzgerald's arguments to be without merit. Conklin does receive both commercial and noncommercial aural service from stations licensed to the nearby community of Binghampton. However, as the Commission has held on numerous occasions, reception service from nearby stations is not a substitute for service from a station licensed to the community itself. *See Clinton, Louisiana*, 45 R.R. 2d 1587 (1979) and *Westover and Grafton, West Virginia*, 46 FR 10737 (1981). It is clear that petitioner seeks to serve the incorporated community of Conklin. As to the correct coordinates for Conklin, the coordinates specified in the *Notice* were not center of city but rather coordinates which reflect the site restriction. However, the restricted site coordinates were derived from center of city coordinates specified in the National Atlas, the Commission's usual source for such information. *See* 47 CFR §73.208. Fitzgerald has provided no compelling reason why the coordinates of the Post Office should be preferred.

7. However, we were unable to determine, after an engineering analysis, whether Conklin would be provided city-grade coverage by a station operating on Channel 227A. Therefore, we found an alternate channel, Channel 263A. Channel 263A can be allotted to Conklin with a site restriction of 4.3 kilometers (2.7 miles) southeast.[1] Based on our engineering analysis, we believe that the channel can be so sited as to provide Conklin with the required 70 dBu coverage. Canadian concurrence in the allotment has been received since Conklin is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Conklin, New York	263A

9. The window period for filing applications will open on **April 13, 1990,** and close on **May 14, 1990.**

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-59-55 and West Longitude 75-47-08. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-95

In the Matter of

Amendment of Section 73.202(b), RM-6569
Table of Allotments,
FM Broadcast Stations.
(Churchville and Luray, Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. At the request of Peter W. Lechman (petitioner), permittee of Station WJNA(FM), Channel 294A, Churchville, Virginia, the Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 4 FCC Rcd 3903 (1989), proposing the substitution of Channel 292B1 for Channel 294A at Churchville, and the modification of the petitioner's construction permit for Channel 294A to specify operation on Channel 292B1. The *Notice* also proposed the substitution of Channel 289A for Channel 292A at Luray, Virginia, and the modification of the license for Station WLCC(FM) at Luray to specify the new Class A channel. In addition, an *Order to Show Cause* was issued to Commonwealth Audio Visual Enterprises ("Commonwealth"), the licensee of Station WLCC(FM) at Luray seeking comments on the proposal to change its facilities in order to accomplish the upgrade at Churchville. Petitioner filed comments reiterating his intention to apply for the higher powered channel, if allotted. Commonwealth filed opposing comments. Petitioner and Commonwealth filed reply comments.

2. Commonwealth, in its comments, objects to the proposed change in frequency due to the potential disruption of service Station WLCC's listening audience will experience. Commonwealth contends that the proposal will result in public confusion among Station WLCC's listening audience. Moreover, Commonwealth claims that the public interest benefit derived from allowing the upgrade at Churchville would "truly be of marginal value." Commonwealth goes on to state that that marginal benefit of implementing the proposal is "outweighted by the harm which would be done to the public and WLCC." Commonwealth further states that an evidentiary hearing should be conducted to remove any doubts that may exist concerning the "substance and weight of the competing public interest considerations." Therefore, Commonwealth argues that the proposal should be denied. On the other hand, if the proposal is granted, Commonwealth stipulates that the petitioner should be required to demonstrate his financial qualifications and establish an escrow account to cover reimbursement for changes to Station WLCC. Commonwealth further states that it must receive at least six months notice prior to effectuating the frequency change in order to minimize the potential loss of service to the station and its listeners.

3. Petitioner, in comments and reply comments, reiterates his willingness to reimburse Station WLCC(FM) for its legitimate and prudent out-of-pocket expenses incurred in the proposed change of frequencies. Petitioner states that "as a show of good faith" he is willing to establish an escrow account in the amount of $10,000 to fund the initial costs associated with the frequency change at Luray within five days after the Commission's action granting the proposal. Petitioner restates that he is willing to completely reimburse Station WLCC(FM) for any additional legitimate and prudent costs incurred in connection with the channel change beyond the funds established in the escrow account consistent with *Circleville, Ohio*, 8 FCC 2d 159 (1967).

4. We reject the argument raised by Commonwealth. Commonwealth has not raised a substantial and material question of fact to warrant a hearing on the proposed modification. First, Commonwealth raised no facts whatsoever that would lead to a conclusion that upgraded service would not serve the public interest. The Commission has held on numerous occasions that the substitution of an existing station's channel at one community serves the public interest where such change permits the provision of a new or expanded service in another community. *See, e.g., Marietta, Ohio, and Ravenswood, West Virginia*, 2 FCC Rcd 4681 (1987), and *Vancouver, Washington; Coos Bay and Corvallis, Oregon*, 4 FCC Rcd 839 (1989). Second, Commonwealth has raised no facts which would cast doubt on petitioner's ability to discharge the reimbursement obligation. The petitioner has stated he will establish an escrow account to fund the initial expense of Commonwealth for implementing the proposed changes. Additionally, petitioner has repeatedly stated his willingness to comply with the reimbursement requirements to Commonwealth for its expenses incurred from changing to the new channel, as required by Commission policy.[1] Finally, Commonwealth will be afforded a significant period of time before it will be required to change channels. As the Commission has stated "it is generally not necessary for the change to take place until utilization of the existing frequency actually prevents a newly authorized station from inaugurating service."[2]

5. We have considered the information presented in this case and conclude that the public interest would be served by adopting the proposal as set forth in the *Notice*. Channel 292B1 can be substituted for Channel 294A at Churchville, Virginia, and the construction permit for Station WJNA(FM) at Churchville modified to specify the higher powered frequency in compliance with the Commission's minimum distance separation requirements [3], with the channel change at Luray. Channel 289A can be substituted for Channel 292A at the licensed site of Station WLCC(FM).[4] Therefore, as requested we are herein modifying the construction permit for Station WJNA(FM) at Churchville to specify operation on Channel 292B1 in lieu of Channel 294A and the license of Station WLCC(FM) at Luray. *See* §1.420(g) of the Commission's Rules.

6. Since Churchville is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner must comply with the notification requirement of Section 73.1030(a) of the Commission's Rules.

7. We believe the public interest would be served by allotting Channel 292B1 to Churchville, Virginia, as that community's first wide coverage area FM service. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Churchville, Virginia	292B1
Luray, Virginia	280A, 289A

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Peter W. Lechman, for Station WJNA(FM), Churchville, Virginia, IS MODIFIED, to specify operation on Channel 292B1 in lieu of Channel 294A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Commonwealth Audio Visual Enterprises for Station WLCC(FM), Luray, Virginia, IS MODIFIED, to specify operation on Channel 289A in lieu of Channel 292A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license BLH-791004AA except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-791004AA except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Commonwealth Audio Visual Enterprises
P.O. Box 387
Luray, VA 22835

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The extent of reimbursement is governed by the guidelines set forth in *Circleville, Ohio, supra*, and is generally left to the good faith negotiation of parties involved subject to Commission review in the event of disagreement. *See also Harold A. Jahnke*, 46 RR 2d 659 (1979).

[2] *See Albany, Buffalo, Ilion, and Utica, New York, and Boston, Massachusetts*, 2 FCC Rcd 4300 (1987) and *Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas*, 4 FCC Rcd 6981 (1989).

[3] The site as specified in the construction permit is located at coordinates 38-09-52 and 79-08-24.

[4] The coordinates are 38-30-41 and 78-29-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-125

In the Matter of

Amendment of Section 73.202(b), RM-6738
Table of Allotments,
FM Broadcast Stations.
(Red Lodge, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 8, 1990; Released: February 26, 1990

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 4820 (1989), issued in response to a petition filed by Beartooth Stereo FM (petitioner), proposing the substitution of Channel 257C for Channel 258C1 at Red Lodge, Montana. Petitioner also requested modification of its construction permit for Channel 258C1, Station KAFM, to specify operation on the new channel. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by substitution of Channel 257C for Channel 258C1 at Red Lodge, Montana. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the site specified by petitioner.[1] In addition, we have authorized a modification of the petitioner's construction permit for Channel 258C1, Red Lodge, to specify operation on Channel 257C in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 12, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Red Lodge, Montana	257C

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the Construction Permit for Channel 258C1, Red Lodge, Montana, IS MODIFIED TO SPECIFY operation on Channel 257C, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 257C are 45-11-36 and 109-19-53.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-138

In the Matter of

Inquiry into the Availability of
Broadcast Television Signals on
Cable Television Signals

ORDER

Adopted: February 16, 1990; Released: February 26, 1990

By the Chief, Mass Media Bureau:

1. On March 24, 1988, the Commission adopted a *Notice of Inquiry* in the above-captioned matter, 3 FCC Rcd 2698 (1988), requesting data, empirical studies and other information concerning the availability of broadcast signals on cable television systems. In conjunction with signal carriage information, the Commission also requested information on any specific harms that broadcast stations may have experienced as a result of not being carried on a cable system within their service areas or of channel repositioning, that is, carriage of a broadcast signal by a cable system on a channel other than that on which the station broadcasts over-the-air.

2. The issues raised in the above-described cable signal carriage inquiry, however, are now subsumed by the Commission's more comprehensive inquiry proceeding in MM Docket No. 89-600, which was initiated on December 12, 1989. *See Notice of Inquiry* in MM Docket No. 89-600, FCC 89-345 (released Dec. 29, 1989). As the Commission stated in this later *Notice*, it has therefore decided to terminate MM Docket No. 88-138 and make the record developed in that docket a part of the record in MM Docket No. 89-600. *See id.* at ¶ 9. This *Order* constitutes the "ministerial action[]" necessary to implement that decision. *Id.* at ¶ 9, n.15.

3. Accordingly, IT IS ORDERED that the record developed in MM Docket No. 88-138 IS INCORPORATED into the record of MM Docket No. 89-600.

4. IT IS FURTHER ORDERED that MM Docket No. 88-138 IS TERMINATED.

5. This action is taken pursuant to authority contained in Sections 4(i), 303, 601 and 623(h) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-389

In the Matter of

Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license.

ORDER

Adopted: February 12, 1990; Released: February 26, 1990

By the Commission:

1. By this action the Commission denies a Petition for Partial Reconsideration of the *Order Denying Petitions for Stay (Order)* in this proceeding filed on July 11, 1989, by Linear Corporation (Linear).[1] In the *Order*, the Commission, *inter alia*, denied Linear's request to stay the provisions of 47 CFR Section 15.33 of the rules which were adopted in the *First Report and Order* in this proceeding.[2] That rule section sets forth the frequency range over which Part 15 radio frequency devices must be measured to demonstrate compliance with the applicable technical standards. Linear, a manufacturer of control and security alarm devices, requests reversal of that decision.[3] As discussed below, the Commission finds that Linear presents no new information or analysis that would warrant the Commission altering its decision not to stay the implementation of Section 15.33.

2. In the *First Report and Order* in this proceeding, the Commission implemented a comprehensive revision of Part 15 of its rules. The Part 15 rules regulate the operation of radio frequency (RF) devices without an individual license. As part of this revision, the Commission established a number of frequency bands where emissions from Part 15 intentional radiators are restricted.[4] These restricted frequency bands were established to protect against interference to services involving safety-of-life and services that use very low received signal levels. In order to ensure that emissions that fell into the restricted bands were attenuated sufficiently and to provide additional protection to the authorized services against interference from Part 15 devices, the Commission expanded the frequency range over which measurements were to be performed for most Part 15 transmitters. Section 15.33 calls for measurements up to at least the tenth harmonic of the device's highest operating frequency.[5] Since many control and security alarm devices operate in the vicinity of 300 MHz, measurements typically would be required up to about 3 GHz.[6] The Commission indicated that the current measurement procedure used for control and security alarm devices, MP-1, would be followed pending development of a new measurement procedure for these devices.[7] The implementation schedule for the rules adopted in the *First Report and Order* basically establishes a 3 year transition period for existing equipment.[8]

3. Linear has filed a petition requesting partial reconsideration of the *First Report and Order*. Therein, Linear, *inter alia*, argues against the need for the restricted frequency bands and against the Section 15.33 requirement to measure up to the tenth harmonic. Further, it seeks a delay of the 3 year implementation period, arguing that designs cannot be finalized and compliance cannot be determined until such time as new measurement procedures are established.[9] Concurrent with its Petition for Reconsideration, Linear filed a Motion for Stay of Section 15.33. In this latter petition, Linear argued that the need to demonstrate compliance above 2 GHz is meaningless absent the establishment of new measurement procedures and measurement site calibration requirements.[10] Linear added that without these procedures and site calibration standards, it would be unsure as to what measurement procedures are acceptable to the Commission and could be delayed indefinitely in obtaining Commission acceptance of measurements above 2 GHz. It argued that this could cause it irreparable harm due to loss of market share.

4. In the *Order*, the Commission concluded that there was no basis for granting Linear's request for a stay of Section 15.33. The Commission concluded that Linear had not demonstrated that it would be irreparably harmed by the current rules remaining in place nor that there was compelling reason to expect that the changes requested in Linear's Petition for Reconsideration would be granted.

5. In its Petition for Partial Reconsideration of the *Order*, Linear asserts that the Commission failed to address all of the relevant portions of its earlier Motion for Stay. Specifically, Linear states that the Commission failed to address the disadvantageous position in which manufacturers of Part 15 control and security alarm devices are being placed with regard to manufacturers of Part 90 security devices. Linear argues that transmitters operated under Part 90 of the Commission's rules are subject to a less stringent emission limit above 2 GHz than that applied to Part 15 devices. Thus, Linear asserts that the Commission discriminated unfairly against manufacturers of Part 15 devices.

6. Linear also maintains that the Commission, by adopting new technical standards prior to implementing its planned new test procedure, has placed Part 15 device manufacturers at risk that devices designed and tested using the current test procedures will not be acceptable once new test procedures are adopted. Further, it is concerned that the amount of time provided for transition is effectively reduced by the time required to develop new test procedures. Linear also continues to take exception to the Commission's decision to employ the current measurement procedure to demonstrate compliance with the emission limits. It states that the procedures contained in MP-1 do not apply to measurements above 2 GHz, and the method specified in Bulletin OET 55 for calibrating the measurement site does not apply above 1000 MHz.[11] Linear therefore requests that the Commission reconsider its action in the *Order* and stay the effective date of Section 15.33, insofar as this rule requires the measurement of emissions above 2 GHz. Linear also requests that the stay continue in effect until six months after the effective date of the planned new measurement procedure.

7. We find no merit in Linear's argument that the new rules place the manufacturers of Part 15 control and security alarm devices at a competitive disadvantage relative to manufacturers of equipment designed to operate under Part 90. The underlying premises of Part 15 and Part 90 are completely different. Part 90 provides for private land mobile radio services, and control and security alarm devices can be operated in these services. Land mobile services have been allocated spectrum based on public interest findings and are afforded interference protection. Typically, several watts of output power are permitted for mobile transmitters and several hundred watts of power may be permitted for base station transmitters. Part 90 specifies a licensing requirement and the eligibility requirements are such that Part 90 equipment normally is not used by the general public.

8. In contrast, Part 15 permits the operation of low power devices under three basic conditions: 1) no harmful interference shall be caused to the authorized radio services; 2) interference caused by other radio frequency sources must be accepted; and, 3) no vested or recognizable rights to the use of any frequency are accrued by virtue of the prior registration or certification of equipment.[12] Typically, Part 15 equipment operates at effective radiated power levels well under one milliwatt. There are no licensing or eligibility requirements for Part 15 devices. Thus, the Part 15 and Part 90 rules are not intended to authorize similar types of operations.[13] In any event, a manufacturer is free to design and market equipment complying with either or both rule Parts.

9. Linear's other arguments are essentially the same as those raised earlier and rejected with regard to a stay of the rules. Contrary to Linear's assertions, there is no requirement to modify Bulletin OET 55. At frequencies above 1000 MHz, any errors introduced by the use of a test site calibrated in accordance with this bulletin are negligible. Further, the current version of MP-1 can be used for measurements above 2 GHz. Under the former rules, MP-1 was employed to make measurements up to 5 GHz.[14] Thus, MP-1 can continue to be used until such time as the Commission specifies a new measurement procedure. The Commission now has issued a *Notice of Proposed Rule Making* proposing a new procedure for measuring the emissions from equipment with periodic emissions, such as control and security alarm devices.[15] While the proposed new measurement procedure reflects features in the new rules, this new measurement procedure was not developed because of changes to the standards. Rather, the new measurement procedure was proposed to provide additional clarity as to how the Commission measures the emissions from control and security alarm devices. Thus, the use of the current measurement procedure, MP-1, or the introduction of a new measurement procedure should not impede the ability of manufacturers to design equipment to meet the technical standards contained in the new Part 15 rules.

10. In its current petition, Linear expresses concern regarding the statement in the *Order* that, in accordance with Section 15.29(d) of the rules, we will measure equipment selected under our equipment sampling program using the measurement procedures in effect at the time the equipment was authorized.[16] Linear states that this places an incredible burden on manufacturers for pre-grant sampling and is wholly illogical for post-grant sampling.[17] It appears that Linear misunderstands the language in the *Order* that discusses the relevance of Section 15.29(d) to the Commission's pre-grant and post-grant sampling program. The intent of this rule section is to indicate that any sample testing of Part 15 equipment that was performed after a grant of equipment authorization was issued by the Commission, i.e., post-grant sampling, would be performed using the measurement procedure that was current at the time the grant was issued. Therefore, future changes to the measurement procedures would not impact existing equipment.

11. In conclusion, we find that Linear has not produced any additional information showing that it will suffer irreparable harm, nor has Linear demonstrated that it is likely to prevail on the merits of its Petition for Reconsideration. We continue to believe that a stay of the application of 47 CFR Section 15.33 would delay unnecessarily our efforts to lower spectrum noise levels and would be to the detriment of the authorized radio services. Consequently, the public interest would not be served by granting Linear's request.

12. Based on the above and pursuant to the authority contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, IT IS ORDERED that the Petition For Partial Reconsideration filed by Linear IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See Order Denying Petitions For Stay*, GEN Docket No. 87-389, adopted June 16, 1989, FCC 89-210.

[2] *See First Report and Order*, GEN Docket No. 87-389, 4 FCC Rcd 3493 (1989). Unless otherwise specified, the Part 15 rule sections referenced in this action are those adopted in the *First Report and Order*.

[3] The reference to control and security alarm devices is to transmitters operating under 47 CFR Section 15.231(a)-(d).

[4] *See* 47 CFR Section 15.205.

[5] *See* 47 CFR Section 15.33.

[6] Under 47 CFR Sections 15.142 and 15.215 of the former rules, i.e., those in effect prior to implementation of the *First Report and Order*, a transmitter operating at a frequency of 300 MHz was required to be measured up to 2 GHz.

[7] As specified in 47 CFR Section 15.31, control and security alarm devices operated under Part 15 are tested in accordance with FCC/OST MP-1 (1983), "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers."

[8] *See* 47 CFR Section 15.37. These transition provisions allow a manufacturer to produce equipment under the regulations that were in effect prior to June 23, 1989, i.e., prior to the implementation of the *First Report and Order*.

[9] The Commission has not yet acted on Linear's Petition for Reconsideration of the *First Report and Order*.

[10] 47 CFR Section 2.948 requires measurement sites used to test Part 15 equipment to be calibrated in accordance with Bulletin OET 55, "Characteristics of Open Field Test Sites," August 1982, reprinted June 1985.

[11] Linear has not provided any example or reason as to why MP-1 cannot be employed at frequencies above 2 GHz.

[12] *See* 47 CFR Section 15.5.

[13] It should be noted that, in most cases, the amount of attenuation, relative to the unmodulated carrier, required for unwanted emissions from Part 90 transmitters is greater than what is required for Part 15 transmitters.

[14] *See* 47 CFR Sections 15.142 and 15.215 of the former regulations.

[15] *See Notice of Proposed Rule Making,* GEN Docket No. 89-117, 4 FCC Rcd 5174 (1989). Linear and other interested parties have been provided an opportunity to comment in that proceeding.

[16] *See* 47 CFR Section 15.29(d).

[17] *See* 47 CFR Sections 2.943, 2.945, 2.956, 2.957 and 15.29. Equipment samples may be tested by the Commission prior to authorization ("pre-grant") and subsequent to authorization or verification ("post-grant") to determine that the equipment complies with the applicable standards.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 76, Subpart J of the Commission's Rules and Regulations Relating to Multiple Ownership of Cable Television Systems	RM-5475

ORDER

Adopted: February 16, 1990; Released: February 26, 1990

By the Chief, Mass Media Bureau:

1. On February 21, 1986, Satcom, Inc., filed a Petition for Rule Making, requesting that the Commission adopt rules and policies establishing both regional and national limits on the number of cable television systems that may be owned, operated or controlled by any one entity. The issues raised in Satcom's Petition, however, are now subsumed by the Commission's comprehensive inquiry proceeding in MM Docket No. 89-600, which was initiated on December 12, 1989. *See Notice of Inquiry* in MM Docket No. 89-600, FCC 89-345 (released Dec. 29, 1989). As the Commission stated in the *Notice*, it has therefore decided to terminate RM-5475 and make the record developed therein a part of the record in MM Docket No. 89-600. *See id.* at ¶ 9. This *Order* constitutes the "ministerial action[]" necessary to implement that decision. *Id.* at ¶ 9, n. 15.

2. Accordingly, IT IS ORDERED that the record developed in RM-5475 IS INCORPORATED into the record of MM Docket No. 89-600.

3. IT IS FURTHER ORDERED that RM-5475 IS TERMINATED.

4. This action is taken pursuant to authority contained in Sections 4(i), 303, 601, 613 and 623(h) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-58

In re Applications of

Osceola Communications, Inc. (hereafter "Osceola") — File No. BPH-870930MG

Augusta Radio Fellowship Institute, Inc., d/b/a Georgia Radio Fellowship (hereafter "Fellowship") — File No. BPH-871001MG

For Construction Permit for a New FM Station on Channel 253/A in Ocilla, Ga.

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Unresolved Issues Fellowship*. As part of the "program of random checks of the financial qualifications of applicants for construction permits" announced in the Commission's March 19, 1987 *Public Notice* (Mimeo No. 2418), the Bureau required that all applicants in the 1988 Murrells Inlet, South Carolina proceeding furnish documentary proof of their respective financial certifications. (MM Docket No. 88-296) Fellowship, an applicant in the Murrells Inlet proceeding, (BPED-870730MV) submitted deficient documentation as to its financial ability to construct and operate the facilities for the 11 construction permit applications pending at the time of the filing of the Murrells Inlet application. Accordingly, the following issues were added against Fellowship in the Hearing Designation Order:

> 3. To determine with respect to . . . Fellowship whether, in light of the evidence adduced concerning the deficiencies set forth above in this Order, the applicant [is] financially qualified.
>
> 4. To determine (a) whether, in light of the evidence adduced pursuant to issue 3, above, Fellowship made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission and (b) if issue (a), above, is resolved in the affirmative, the effect thereof on Fellowship's basic qualifications to be a Commission licensee.

3 FCC Rcd 3928 (1988).

3. Pursuant to Fellowship's November 10, 1988 request, in a *Memorandum Opinion and Order* released February 1, 1989, the presiding Administrative Law Judge dismissed Fellowship's application with prejudice; the above issues were never tried. These unresolved issues call into question Fellowship's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Fellowship in this proceeding.

4. The Osceola applicant being considered in this proceeding conflicts with a pending Rule Making proceeding to modify the frequency of WTBY-FM, Homerville, Georgia from Channel 288A to Channel 254A. At the time that the Osceola application was filed, a petition for Rule Making had not been filed. Accordingly, we will designate this application for hearing. However, if the ultimate construction permit is issued to Osceola it will be conditioned upon the outcome of the WTBY-FM, Homerville, GA Channel 254A Rule Making proceeding.

5. The applicant listed below has petitioned for leave to amend its application on the dates indicated. The accompanying amendments were filed after December 31, 1987, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Fellowship	June 28, 1988; September 9, 1988 January 18, 1989; April 10, 1989;

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Osceola and Fellowship have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Osceola and Fellowship would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Fellowship whether, in light of the evidence adduced concerning the deficiencies set forth in the Murrell's Inlet, South Carolina Order the applicant is financially qualified.

2. To determine (a) whether, in light of the evidence adduced pursuant to issue 1, above, Fellowship made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission and (b) if issue (a), above, is resolved in the affirmative, the effect thereof on Fellowship's basic qualifications to be a Commission licensee.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by Osceola and Fellowship would constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, THAT, if the ultimate construction permit is issued to Osecola in the Ocilla, Georgia proceeding it will be conditioned upon whatever action is taken in the Homerville, Gerogia Channel 254A Rule Making proceeding.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Fellowship ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-65

In the Matter of

Amendment of Section 73.202(b), RM-7086
Table of Allotments,
FM Broadcast Stations.
(Emporia, Fort Scott and
Independence, Kansas)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: February 8, 1990; Released: February 27, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Communications Group, Inc. (petitioner), requesting the substitution of FM Channel 269C2 for Channel 269A at Emporia, Kansas. Petitioner also requests modification of its license for Station KEGS(FM), to specify operation on the higher class channel.

2. Channel 269C2 can be allotted to Emporia, Kansas, in compliance with the minimum distance separation requirements of the Commission's Rules at petitioner's specified site, provided substitutions are made at Fort Scott and Independence, Kansas.[1] Channel 269C2 is currently short spaced to Station KMKE, Channel 269A, Manhattan, Kansas. However, Station KMKE has requested substitution of Channel 268C2 for Channel 269A at Manhattan and modification of its license in MM Docket 87-36. *See, Report and Order* DA 89-1622 (released January 3, 1990). The grant of a license for Channel 269C2 at Emporia will be contingent on Station KMKE being licensed on Channel 268C2. Petitioner has proposed the substitution of Channel 284A for Channel 269A at Fort Scott. Channel 284A can be allotted to Fort Scott at the current location of Station KVCY in compliance with the Commission's spacing requirements.[2] Petitioner has further proposed the substitution of Channel 275A for Channel 269A at Independence, Kansas. Channel 275A can be allotted to Independence in compliance with the minimum distance separation requirements at the current site of Station KIND-FM's construction permit. [3] Thus, we shall issue an *Order* to Wisconsin Voice of Christian Youth, Inc., the licensee of Station KVCY, and Central Broadcasting, Inc., licensee of Station KIND(FM), to Show Cause why their respective licenses should not be modified. Since Channel 269C2 is an adjacent channel upgrade, the modification at Emporia can take place in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to change frequency in order to accommodate a new channel allotment, we require that the proponent of the new allotment make a commitment that it will reimburse the affected station for the reasonable and necessary costs incurred in changing frequencies. Petitioner has indicated its willingness to reimburse the licensees of Station KVCY and Station KIND(FM) for costs in implementing the change in frequency in accordance with Commission policy.

4. In view of the fact that the proposed allotment could provide a first wide coverage station at Emporia, Kansas, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Emporia, Kansas	258A, 269A, 285A	258A, 269C2, 285A
Fort Scott, Kansas	269A, 280A	280A, 284A
Independence, Kansas	269A	275A

5. IT IS ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, Wisconsin Voice of Christian Youth, Inc., licensee of Station KVCY, Fort Scott, Kansas, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 280A in lieu of Channel 269A.

6. IT IS ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, Central Broadcasting, Inc., licensee of Station KIND(FM), Independence, Kansas, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 275A in lieu of Channel 269A.

7. Pursuant to Section 1.87 of the Commission's Rules, Wisconsin Voice of Christian Youth, Inc., may not later than **April 20, 1990,** file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Wisconsin Voice of Christian Youth, Inc., to furnish additional information. If Wisconsin Voice of Christian Youth, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Wisconsin Voice of Christian Youth, Inc., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. Pursuant to Section 1.87 of the Commission's Rules, Central Broadcasting, Inc., may not later than **April 20, 1990,** file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Central Broadcasting, Inc., to furnish additional information. If Central Broadcasting, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Central Broadcasting, Inc., will be

deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS Further Ordered, That the Secretary of the Commission Shall Send By Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Wisconsin Voice of Christian Youth, Inc.
2712 West Vliet Street
Milwaukee, Wisconsin 53208
(license of Station KVCY)

Central Broadcasting, Inc.
113 South 8th Street
Independence, Kansas 67301
(licensee of Station KIND(FM))

Manhattan Broadcasting Co., Inc.
P.O. Box 1350
Manhattan, Kansas 66502
(licensee of Station KMKE)

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **April 20, 1990,** and reply comments on or before **May 7, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James P. Riley
Robert D. Primosch
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036
(Counsel for the petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 269C2 at Emporia are 38-07-04 and 96-11-41.

[2] The coordinates for Channel 284A at Fort Scott are 37-47-47 and 94-42-20.

[3] The coordinates for Channel 275A at Independence are 37-15-42 and 95-45-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-66

In the Matter of

Amendment of Section 73.202(b), RM-7139
Table of Allotments,
FM Broadcast Stations.
(Osage Beach and Warsaw,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 8, 1990; Released: February 27, 1990

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by KRMS-KYLC, Inc. (petitioner), requesting the substitution of FM Channel 228C3 for Channel 228A at Osage Beach, Missouri. Petitioner also requests modification of its license for Station KYLC to specify operation on the higher class channel.

2. Channel 228C3 can be allotted to Osage Beach, Missouri, in compliance with the minimum distance separation requirements at the petitioner's proposed site.[1] To accommodate the new channel at Osage Beach, it would be necessary to delete Channel 229A at Warsaw, Missouri. One application is on file for the channel at Warsaw. Petitioner has proposed the substitution of Channel 253A for Channel 229A at Warsaw. Channel 253A can be allotted to Warsaw in compliance with the spacing requirements at the applicant's site for Channel 229A.[2] The applicant for Channel 229A at Warsaw would be permitted to specify the new Class A channel at a non-short spaced site and retain its cut-off protection, since the channels are of an equivalent class.

3. As for the requested upgrade at Osage Beach, we shall propose to modify the license of Station KYLC to specify operation on Channel 228C3, in accordance with Section 1.420(g) of the Commission's Rules.

4. In order to provide a wide coverage area station for Osage Beach, Missouri, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Osage Beach, Missouri	228A	228C3
Warsaw, Missouri	229A, 249A	249A, 253A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 20, 1990,** and reply comments on or before **May 7, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Bruce A. Eisen
Kaye, Scholer, Fierman,
Hays & Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for the petitioner)

7. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send By Certified Mail, Return Receipt Requested, a copy of this Order to the following:

MaHaffey Enterprises, Inc.
P.O. Box 4584
Springfield, Missouri 65808

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 228C3 at Osage Beach are 38-17-33 and 92-34-24.

[2] The coordinates for Channel 253A at Warsaw are 38-20-30 and 93-21-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-590

In the Matter of

Amendment of Section 73.202(b),	RM-6112
Table of Allotments,	RM-6233
FM Broadcast Stations.	RM-6290
(Endwell and Southport, New York)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 8, 1990; Released: February 27, 1990

By the Chief, Allocations Branch:

1. At the request of Harold Kozlowski (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 57 (1988), proposing the allotment of Channel 298A to Endwell, New York, as the community's first local FM service. Petitioner and Ronald F. Balonis ("Balonis") filed comments supporting the allotment at Endwell. Victor A. Michael ("Michael") and Dean F. Aubol ("Aubol") filed counterproposals requesting the allotment of Channel 298A to Southport and Southport Township, respectively.[2, 3] Petitioner filed reply comments.[4]

2. Michael and Aubol both seek the allotment of a first local FM service to Southport. Aubol states that Southport Township is the third largest populated minor civil division in Chemung County. In response to the counterproposals, petitioner states that a comparison of the two communities is not necessary since Channel 241A can be allotted to Southport. He states that the channel can be allotted with a site restriction of 8.5 kilometers south.

3. We were unable to determine after an engineering analysis whether Southport would be provided city-grade coverage by a station operating on Channel 241A. Therefore, we found an alternate channel, Channel 258A, to allot to Southport.

4. We believe the public interest would be served by alloting an FM channel to both Endwell and Southport, since they could be provided with their first local FM services. Based on our review of the pleadings before us, we find that a comparison of the two communities is not necessary since a channel is available for use at each community. Channel 298A can be allotted to Endwell and Channel 258A can be allotted to Southport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[5] Canadian concurrence in these allotments has been received since Endwell and Southport are both located within 320 kilometers (200 miles) of the U.S.-Canadian border.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 13, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Endwell, New York	298A
Southport, New York	258A

6. The window period for filing applications will open on **April 16, 1990,** and close on **May 16, 1990.**

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Southport has been added to the caption.

[2] Public Notice of the filing of the counterproposals was given on March 8, 1988, Report No. 1715.

[3] The 1980 U.S. Census lists both the Census Designated Place ("CDP") of Southport, with a population of 8,329 persons, and the Town of Southport, with a population of 11,586 persons. According to the U.S. Census Bureau, the Southport CDP listing reflects the densely populated area within the boundaries of the Town of Southport. According to the U.S. Census Bureau, the CDP has separately defined boundaries and we have confirmed that a station operating on Channel 258A can place the required 70 dBu signal over the Southport CDP. Therefore, applicants for the Southport channel will be required to demonstrate compliance with the Commission's technical requirements using the boundaries of the Southport CDP.

[4] After the record closed, Kevin M. Fitzgerald ("Fitzgerald"), filed a pleading entitled "Petition for Rule Making and Counterproposal to Reply Comments" in this proceeding. The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment period, nor do they provide for the filing of counterpropsals after the initial comment deadline in a proceeding. However, since the action herein permits consideration of an allotment at South Waverly, that portion of his pleading will be the subject of a separate Notice of Proposed Rule Making.

[5] The coordinates for Channel 298A at Endwell are North Latitude 42-06-06 and West Longitude 76-02-18. The coordinates for Channel 258A at Southport are 42-03-17 and 76-49-10. Because the petitions which resulted in these allotments were filed

prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-318

In the Matter of

Amendment of Section 73.202(b), RM-6692
Table of Allotments,
FM Broadcast Stations.
(Windcrest and Hondo, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 8, 1990; Released: February 27, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of Jewel R. Morris (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 5935 (1989), proposing the allotment of Channel 253A to Windcrest, Texas, as that community's first local FM service. In order to accomplish the Windcrest allotment, petitioner suggested the substitution of Channel 254A for Channel 253A at Hondo, Texas. Petitioner filed supporting comments restating her interest in the allotment. William Berger, d/b/a Radio Medina, Inc., licensee of Station KRME(AM), Hondo, Texas, and permittee of Station KRBH(FM), Channel 253A at Hondo filed reply comments.[1] Cosmopolitan Enterprises of Victoria, Inc. ("Cosmopolitan"), licensee of Station KTXN-FM, Channel 254C1, Victoria, Texas, and Reding Broadcasting Company, ("Reding"), licensee of Station KBOP-FM, Channel 252A at Pleasanton, Texas, filed late comments.[2]

2. On January 29, 1990, petitioner requested that her comments and expression of interest in this proceeding be withdrawn. Accordingly, we shall grant her request for withdrawal and dismiss the proposal. Therefore, IT IS ORDERED, That the petition for rule making submitted by Jewel R. Morris requesting the allotment of Channel 253A to Windcrest, Texas, and requiring the substitution of Channel 254A for Channel 253A at Hondo, Texas, IS DISMISSED.

3. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

4. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Initially, Channel 253A at Hondo was vacant but applied for by Radio Medina, Inc. On April 14, 1989, Radio Medina, Inc., was granted a construction permit in accordance with its application (BPH-861215MB).

[2] It should be noted that comments in this proceeding were due September 22, 1989. Cosmopolitan filed its comments on September 25, 1989, and Reding filed its comments on January 8, 1990. Reding subsequently filed an erratum, a correction, a supplement and further supplement to its late-filed comments. Petitioner filed reply comments. We have not accepted the late-filed comments for consideration herein, in accordance with Sections 1.415(d) and 1.420(d) of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-67

In the Matter of

Amendment of Section 73.202(b),	RM-7026
Table of Allotments,	RM-7057
FM Broadcast Stations.	
(Bon Air, Chester, Mechanicsville,	
Ruckersville, and Williamsburg,	
Virginia)	

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: February 7, 1990; Released: February 27, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration are related petitions for rule making. The first petition, filed by Sinclair TeleCable, Inc. ("Sinclair"), licensee of Station WCDX(FM), Channel 224A, Mechanicsville, Virginia, proposes the substitution of Channel 221B1 for Channel 224A at Mechanicsville and the change of community of license for Station WCDX(FM) from Mechanicsville to Bon Air, Virginia.[1] Sinclair also requests the modification of its station's license to specify operation on Channel 221B1 at Bon Air. In order to accomplish the upgrade, Sinclair requests channel substitutions for Station WDYL(FM) at Chester, Virginia, (Channel 226A for Channel 221A), and Station WXZY(FM) at Ruckersville, Virginia (Channel 270A for Channel 221A). The second petition, filed by Keymarket of Virginia, Inc. ("Keymarket"), licensee of Station WQSF(FM), Channel 243B at Williamsburg, Virginia, seeks to change of community of license for Channel 243B at Williamsburg to Mechanicsville, Virginia. Keymarket also requests the modification of its license for Station WQSF(FM) to specify operation on Channel 243B at Mechanicsville. Keymarket and Sinclair (collectively referred to as "petitioners") request the consolidation of their petitions in order to amend the FM Table of Allotments in accordance with Section 1.420(i) of the Commission's Rules.

2. Petitioners submit information in support of their proposals. Petitioners seek the substitution of Channel 221B1 for Channel 224A at Mechanicsville, the reallotment of Channel 221B1 from Mechanicsville to Bon Air, and the reallotment of Channel 243B at Williamsburg to Mechanicsville. Petitioners contend that adoption of the aforementioned proposal would serve the public interest by providing a first local service to Bon Air, retaining a first local service in Mechanicsville and preserving local service at Williamsburg with Station WMBG(AM).

3. Because the contour of its proposed upgrade on Channel 221 would overlap the Grade B contour of TV Channel 6 Station WTVR, Sinclair submits a preclusion study demonstrating the impact the allotment of Channel 221B1 at Bon Air would have on the availability of noncommercial educational channels in the area in accordance the Note to 47 CFR § 1.420(g) and *Myrtle Beach, South Carolina*, 3 FCC Rcd 7269 (1988). Specifically, Sinclair indicates that although potential preclusion would occur on Channel 220 (Class A, C3 or C2), alternate channels in the noncommercial educational portion of the band are available.

4. After a careful review of Sinclair's proposal, we have reached two tentative conclusions on which we invite comments. First, with respect to the effect of Sinclair's proposal on noncommercial educational channel availability in the area, Sinclair shows preclusion would result only on Channel 220. Sinclair shows that Channels 216, 212 and 208 are available respectively for the precluded cities of Farmville, Crewe, Hampden Sydney, and Appomattox, Virginia, using "vertical polarization" to avoid interference with television Station WTVR, Channel 6, Richmond, Virginia. Given the size and the location of the precluded cities, and the availability of alternate channels, we believe Sinclair has met the burden of demonstrating that its proposal would not adversely impact noncommercial broadcasting. Second, we tentatively conclude that adoption of Sinclair's proposal would not necessarily have the effect of removing an existing service representing Mechanicsville's only local transmission service in violation of *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989). Although Sinclair's existing station is the only local transmission outlet in Mechanicsville, and that station would be removed from Mechanicsville, the net effect of the proposals before us would be to leave one existing station in Mechanicsville, since Keymarket's existing Williamsburg station would become a Mechanicsville station. We request comments on this conclusion. We also request comments on how we should implement the proposed changes, if adopted, so that at no time would the implementation process have the effect of depriving Mechanicsville of at least one existing service.

5. We believe the public interest could be served by the substitution of Channel 221B1 for Channel 224A at Mechanicsville, Virginia, the change of community of license for Channel 221B1 from Mechanicsville to Bon Air, Virginia, and the reallotment of Channel 243B from Williamsburg, Virginia, to Mechanicsville. The communities of Mechanicsville and Bon Air are separated by 18.9 kilometers (11.7 miles), whereas the required separation between Class B1 co-channel allotments is 175 kilometers (109 miles). The required separation between Class B co-channel allotments is 241 kilometers (150 miles), whereas the communities of Williamsburg and Mechanicsville are separated by only 69.5 kilometers (43.2 miles). Thus, the proposals are mutually exclusive with the present allotments. In addition, the removal of Channel 243B from Williamsburg will not deprive that community of its only local transmission service since AM Station WMBG currently provides local broadcast service there.

6. Channel 221B1 can be allotted to Bon Air in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.8 miles) north of the city,[2] provided channel substitutions are made at Chester, Virginia, Channel 226A for Channel 221A, and Ruckersville, Virginia, Channel 270A for Channel 221A. The allotment of Channel 226A at Chester

requires the relocation of Station WDYL(FM)'s transmitter site 2.4 kilometers (1.5 miles) northeast of the city. [3] The channel change at Ruckersville can be accomplished at the present transmitter site of Station WXZY(FM).[4] Channel 243B can be reallotted from Williamsburg to Mechanicsville at the site specified by Keymarket, which is located 24.3 kilometers (15.1 miles) southwest of Mechanicsville.[5]

7. In light of the proposed change at Ruckersville, we are herein issuing a *Show Cause Order* to Ridge Broadcasting Corporation, licensee of Station WXZY(FM) at Ruckersville, seeking comments as to why its authorizations should not be modified to specify operation on Channel 270A in lieu of Channel 221A. Since Sinclair included with its petition a letter from Hoffman Communications, Inc., the licensee of Station WDYL(FM) at Chester agreeing to accept the necessary changes to its facilities in order to accomplish the Bon Air upgrade we need not serve an order to show cause for the Chester station. Commission policy requires that Stations WDYL(FM) and WXZY(FM) be reimbursed for the reasonable costs of changing frequencies. Sinclair has stated its willingness to reimburse both stations for the reasonable costs of changing their facilites.

8. As requested, we shall propose to modify the license of Station WCDX(FM) to specify the change of community of license from Mechanicsville to Bon Air on Channel 221B1 in lieu of Channel 224A, while simultaneously modifying the license of Station WQSF(FM) to specify the change of community of license from Williamsburg to Mechanicsville. In accordance with Sections 1.420(g) and (i) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioners demonstrate the availability of an additional equivalent channel at Bon Air and Mechanicsville.

9. Accordingly, based on the aforementioned the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

	Channel No.	
City	Present	Proposed
Bon Air, Virginia	—	221B1
Chester, Virginia	221A	226A
Mechanicsville, Virginia	224A	243B
Ruckersville, Virginia	221A	270A
Williamsburg, Virginia	243B	—

10. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Ridge Broadcasting Corporation, permittee of Station WXZY(FM), Channel 221A, Ruckersville, Virginia, SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 270A in lieu of Channel 221A.

11. Pursuant to Section 1.87 of the Commission's Rules, Ridge Broadcasting Corporation,, may, not later than **April 20, 1990,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Ridge Broadcasting Corporation, to furnish additional information. If Ridge Broadcasting Corporation, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Ridge Broadcasting Corporation, will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Ridge Broadcasting Corporation
P. O. Box 189
Quinque, VA 22965

Hoffman Communications, Inc.
10600 Jefferson Davis Hwy.
Richmond, VA 23237

13. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

14. Interested parties may file comments on or before **April 20, 1990,** and reply comments on or before **May 7, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Howard M. Weiss, Esquire
Mark N. Lipp, Esquire
Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Avenue
Suite 500
Washington, D. C. 20036
(Counsel for Sinclair TeleCable, Inc.)

James M. Weitzman, Esquire
Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, N.W.
Suite 1100
Washington, D. C. 20005
(Counsel for Keymarket of Virginia, Inc.)

15. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

16. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] As an alternative proposal, Sinclair states that it would accept an upgrade on Channel 221B1 at Mechanicsville, if unable to obtain the change of community of license from Mechanicsville to Bon Air.

[2] The site restriction, as specified by Sinclair, is located at coordinates 37-39-00 and 77-35-00.

[3] The coordinates for Channel 226A at Chester, Virginia, are 37-22-16 and 77-25-41.

[4] The coordinates are 38-14-55 and 78-24-38.

[5] The coordinates are 37-25-30 and 77-32-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-61

In re Applications of

WRIGHTSVILLE COMMUNICATIONS COMPANY, INC. (hereafter "Wrightsville") File No. BPH-871109ME

DELONEY BROADCASTING, LTD. (hereafter "Deloney") File No. BPH-871109MH

For Construction Permit for a New FM Station on Channel 299A in Wrightsville, Arkansas

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Late - filed Amendment.* On October 28, 1988, Wrightsville filed an amendment reflecting a change in the tower site due to the rejection of the current tower site by the FAA. On November 17, 1988, DeLoney filed an opposition to Wrightsville's amendment claiming that Wrightsville had neither filed a formal petition for leave to amend nor demonstrated good cause for the acceptance of its late filed amendment. All amendments filed outside the specified periods for amendments as of right and prior to designation for hearing must be accompanied by a showing of good cause, or filed pursuant to 47 C.F.R. §§ 1.65 or 73.3514. Unauthorized or untimely amendments are subject to return by the Commission's staff without consideration. Wrightsville's October 28 amendment was submitted after the applicable window for amendments as of right and is therefore untimely. However, the Commission has traditionally considered FAA disapproval to be "good cause" for a site relocation amendment. *See, e.g., Orlando FM Group Limited Partnership*, 2 FCC Rcd 4691, 4696 (1987). Accordingly, Wrightsville's amendment will be accepted below, although no comparative advantage will be given to Wrightsville as a result of the amendment. *See Cypress Communications, Inc.*, 47 RR 2d 132, 134 (1980). Additionally, DeLoney's objection will be denied.

3. William A. DeLoney, who is president, director and 100% shareholder in DeLoney Broadcasting Co., Ltd., the sole general partner of DeLoney, is currently employed by Southern Starr of Arkansas, licensee of KZLR-FM, Pine Bluff, Arkansas. Mr. DeLoney has indicated that, prior to the commencement of program test authority, he will terminate his employment and sever all connections with Southern Starr of Arkansas in the event a construction permit is awarded to his application as a result of this proceeding. Accordingly, an appropriate condition will be specified.

4. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Wrightsville has not completed Item 4 correctly, in that it has provided only a post office box number as the residence address for principal Felix J. McDonald. Accordingly, Wrightsville will be required to submit an amendment which gives all the information required by Section II, Item 4 to the Presiding Administrative Law Judge after this Order is released.

5. Deloney and Wrightsville petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after January 22, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Deloney	November 7, 1988
Wrightsville	March 4, 1988; October 28, 1988 (Eng.)

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That, in the event of grant of Deloney's application, William A. DeLoney will be ordered to divest himself of all interests in and sever all connections with Stations KZLR-FM, Pine Bluff, Arkansas prior to the commencement of program test authority.

10. IT IS FURTHER ORDERED, That Wrightsville shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge, within 30 days after the release of this Order.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by DeLoney and Wrightsville ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That DeLoney's Objection to Wrightsville's October 28, 1988 amendment IS DENIED.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-75

In re Applications:

ANNETTA COVANY d/b/a MELCHAISEDEC BROADCASTING COMPANY (hereafter Covany)	File No. BPH-880128MF
GRIZZLY FM, INC. (hereafter Grizzly)	File No. BPH-880128MH
PARALLEL COMMUNICATIONS (hereafter Parallel)	File No. BPH-880128MP
BEAR VALLEY BROADCASTING (hereafter Bear Valley)	File No. BPH-880126NM (Previously Dismissed)

For a Construction Permit For a New FM Station in Big Bear City, California On Channel 227A

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station in Big Bear City, California.

2. *Preliminary Matters*. On October 7, 1988, the application filed by Bear Valley was returned as unacceptable for filing for inconsistencies between the coordinates listed in Section V-B, Item 2(b) of FCC Form 301 and the coordinates plotted on the U.S.G.S. topographic map. As the return letter noted, these inconsistencies made it "impossible to determine the veracity of the site availability certification, the environmental impact statement, or the information supplied for FAA approval." The return of Bear Valley's application went on Public Notice on October 17, 1988.

3. On November 22, 1988, Bear Valley filed a Petition for Reconsideration of the return of its application. Pursuant to 47 U.S.C. § 405 and Section 1.106(f) of the Commission's Rules, a Petition for Reconsideration must be filed within 30 days of the release of the Public Notice. Using the time computation standards as defined by 47 C.F.R. § 1.4, Bear Valley had until November 17, 1988 to file a Petition for Reconsideration. As this 30 day time mandate is statutory, no extensions may be granted. Accordingly, the Petition filed by Bear Valley is untimely and will herein be denied.

4. Additionally, Bear Valley's Petition, were we to consider it, inadequately accounts for the discrepancy in the application. Bear Valley argues that the Commission can make all relevant determinations as to its application since the application includes a site certification showing site availability, includes an exhibit showing compliance with the RF exposure guidelines, and includes a copy of the completed FAA Form 7460-1 with the correct geographical coordinates listed and an indication of FAA approval.

5. We do not agree with these conclusions. Applicants for FM construction permits have long been required by FCC Forms 301 and 340, to show on a 7.5 minute series U.S. Geological Survey Topographical Quadrangle map "the proposed transmitter location *accurately* plotted." *FM Transmitter Site Map Submissions Required by FCC forms 301 and 340*, 1 FCC Rcd 381 (1986) (Emphasis added).[1] As emphasized in the *FCC 301 instructions*, at page 5, the purpose for such a map is "to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an FM application." The failure, therefore, to provide a consistent set of coordinates prohibits the Commission's staff from determining the acceptability of applications. *La Crescent Community Broadcasters*, 3 FCC Rcd 2332 (1988).

6. Bear Valley's arguments notwithstanding, we cannot determine the correct coordinates and thus further processing of Bear Valley's application is not possible. All of Bear Valley's claims arguing that the Commission can derive the correct information from the application assume that the Commission can determine that the correct coordinates are those listed in the application and not the coordinates plotted on the topographic map. This is a determination which cannot be confidently and reliably made since no information is available within the application or in any Commission record that would enable the Commission to identify precisely the transmitting antenna tower coordinates. For example, we cannot determine FAA approval since we cannot verify that Bear Valley submitted the correct coordinates to the FAA. Likewise, the Commission cannot determine whether Bear Valley has a valid site certification or whether Bear Valley complies with the RF guidelines since we do not know if either of these two submissions were formulated using the correctly plotted coordinates.

7. On March 2, 1989, Dewey E. Richardson, the airport manager at Big Bear Airport District, filed an Informal Objection against the application of Covany. Mr. Richards asserts that Covany's proposed site would constitute a hazard to air navigation.

8. Jurisdiction over matters involving air safety issues is deferred to the Federal Aviation Administration for analysis and judgment. The Commission recognizes the expertise of the FAA in determining whether a proposed structure constitutes an air navigation hazard. The Commission received notification on June 21, 1988 that the site proposed by Covany had been cleared by the FAA as presenting no possibility of an air hazard. In light of this determination, Richardson's Informal Objection will herein be denied.

9. George M. Perrin, a principal of Bear Valley, filed an Informal Objection against Grizzly, received by the Commission on April 7, 1988. Mr. Perrin asserts that Grizzly

has failed to comply with 47 C.F.R. § 73.3580 in that it did not publish a local notice in *The Grizzly and Big Bear Life* newspaper. Perrin also states that the site proposed by Grizzly is on U.S. Forest Service land and that the special land use manager, Mr. Paul Bennett, the individual named in Grizzly's site certification form, had said that he was not contacted and that he would not allow a permit to be issued for the site proposed.

10. In its April 20, 1988 Opposition, Grizzly states that it did publish a local notice in compliance with Section 73.3580 of the Commission's Rules. Grizzly states that it published the proper notices in *The Sun*, a daily newspaper published in San Bernadino, California, which has the greatest circulation in Big Bear City. The *Grizzly and Big Bear Life*, according to Grizzly, is published in Big Bear Lake, CA. Big Bear City has no daily or weekly newspaper. Accordingly, we find that Grizzly is in compliance with the Commission's local notice rules.

11. Perrin's assertion that Grizzly lacks site availability, while not addressed by Grizzly in its Opposition, is unsubstantiated. Without any affidavits or other forms of verification, the Commission will not specify an issue concerning the site certification submitted by Grizzly. Accordingly, the Informal Objection filed by Perrin will be herein denied.

12. *Covany*. The distances to the 60 dBu contour determined pursuant to 47 C.F.R. § 73.313 for each height above average terrain given in Section V-B, Item 19, were in error by as much as 29 percent according to Commission engineering studies. Consequently, the contour map and predictions of coverage area and population are erroneous. Accordingly, Covany must submit corrected figures for Section V-B, Item 19, FCC Form 301, a new contour map and new area and population figures.

13. *Grizzly*. Information before the Commission indicates that Grizzly was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Oliver Springs, Tennessee	88-201
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party in interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolve these issues. These unresolved issues call into question Grizzly's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Grizzly in this proceeding.

14. *Parallel*. The Commission requires that if there will be five or more fulltime station employees, an applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Parallel has filed such statement, it is deficient. Parallel has not listed any recruitment sources for employing Hispanics, which comprise more than five percent of the work force of San Bernadino county. Accordingly, Parallel will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

15. In response to Section V-B, Item 7(a) of FCC Form 301, the applicant has indicated a site above mean sea level height of *2132* meters and an overall tower height of *52* meters. The figure of 2132 meters is found to match that of the topographic site map. These two parameters match Parallel's corresponding heights on the tower sketch. By adding these two parameters, the overall tower height above mean sea level is found to be *2184* meters. This is correctly listed in Section V-B, Item 7(a)(3). However, it is clearly incorrectly listed on the tower sketch as being 2231 meters.

16. Also, in response to Section V-B, Item 7(b)(1), Parallel has indicated an antenna height of *47* meters. This parameter matches its corresponding height on the tower sketch. By adding this parameter to the site elevation above mean sea level height of *2132* meters, the antenna radiation center above mean sea level is found to be *2179* meters. This is correctly listed in Section V-B, Item 7(b)(2). However, it is clearly incorrectly listed on the tower sketch as being *2184* meters.

17. We find that these discrepancies do not render the application unacceptable for tender or for filing. Either figure does not result in the applicant's proposing a facility above the 91 meter maximum height permitted a Class A station in the Mexican border zone. In addition, sufficient information is provided in the application to permit us to confidently and reliably ascertain the correct values. However, the applicant will, nonetheless, be required to submit a clarifying amendment within 30 days of the release of this Order.

18. *Other Matters*. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Grizzly	November 3, 1988; December 12, 1988; December 22, 1988; December 22, 1988; January 19, 1989; January 19, 1989
Parallel	August 11, 1988; October 25, 1988

19. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

20. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Grizzly.

2. To determine whether Grizzly's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether Grizzly possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

21. IT IS FURTHER ORDERED, That the untimely Petition for Reconsideration filed by Bear Valley IS HEREBY DENIED.

22. IT IS FURTHER ORDERED, That the Informal Objection filed by Dewey E. Richardson against Covany IS HEREBY DENIED.

23. IT IS FURTHER ORDERED, That the Informal Objection filed by George M. Perrin against Grizzly IS HEREBY DENIED.

24. IT IS FURTHER ORDERED, That Covany submit an amendment pursuant to paragraph 7, correcting Section V-B, Item 19, and submitting a new contour map and new population and area figures with the presiding Administrative Law Judge within 30 days of the release of this Order.

25. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Parallel shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

26. IT IS FURTHER ORDERED, That Parallel submit an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order correcting the discrepancies between Section V-B of FCC Form 301 and the antenna sketch.

27. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Grizzly and Parallel ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

28. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

29. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

30. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Section V-B, Item 2 of FCC Form 301 (October 1986) requires applicants to provide the " *exact* location" of their proposed antenna. Similarly, Section V-B, Items 15 and 16 requires applicants to provide maps that show "clearly, legibly and *accurately* " the location of the proposed transmitting antenna. (Emphasis added.)

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-63

In re Applications of

RADIO SOUTH BURLINGTON, INC. (hereafter: South) File No. BPH-880126MR

RADIO KEENE, INC. (hereafter: Keene) File No. BPH-880126MY

AGAPE BROADCASTING (hereafter: Agape) File No. BPH-880126NN

For Construction Permit for a New FM Station on Channel 254A (98.7 MHz) in Winchester, New Hampshire

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: February 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *South*. On September 19, 1988, Agape filed a petition to dismiss the application of South. Agape asserts that the South application should be dismissed because: (1) the perfecting amendment submitted by South did not contain a 7.5 Minute USGS Series Map as required by Section 73.3584 of the Commission's Rules; and (2) South, in its original filing, did not comply with Section 73.207 and failed to submit "threshold showing" exhibits relative to its request for a waiver of the Section 73.207 spacing requirements.

3. Agape's assertion that the South application should be dismissed because the perfecting amendment did not contain a 7.5 Minute Series Map as required by the Commission is unfounded. The Engineering Statement submitted with that amendment contained the statement that a 15 Minute USGS Quadrangle Map with original margin markings was utilized because there is no 7.5 Minute Topographical Map published for the area in which the transmitter site is located. Agape asserts that South should have utilized a 7.5 x 15 Minute (Hybrid) Map in order to qualify for acceptance by the Commission and that the South application "does not meet the Commission's hard look, letter perfect standards in accord with Section 73.3584 [of the Commission's Rules] or the new FCC tenderability standards as announced in the Commission's Notice of 1985 Report and Order MM [Docket] 84-750. 50 Fed. Reg. 19,936." Agape further asserts that a larger scale Winchester, New Hampshire map was available in a Brattleboro, Vermont bookstore in January 1988. The established purpose of submitting a transmitter site map is to permit the Commission's staff to determine the accuracy of the coordinates and ground elevation. 15 minute maps have been deemed acceptable for this purpose. *See Dennis H. Curley*, 3 FCC Rcd 681 (HDO, 1988) and *Franklin Broadcasting*, DA 88-730 (HDO, released May 25, 1988). Indeed, the instant situation is controlled by the case of *Bernard Broadcasting*, 2 FCC Rcd 4048 (HDO, 1987). There, a competing applicant had challenged the acceptance for tender of two applications which had used a 15 minute USGS map in lieu of a 7.5 minute map. The Commission found that the applicants had used the 15 minute map on the belief that a 7.5 minute map was not available and that no evidence of misrepresentation of unavailability of the 7.5 minute map could be found.

4. In its opposition, South has set forth a declaration of Edward F. Perry, Jr., the consulting engineer who prepared the South application, to outline the circumstances and procedures relevant to the map. Mr. Perry states that he "contacted International Map Service of Denver, Colorado, a distribution agent for the U.S. Geological Survey, to determine if the official Geological Survey Quadrangle Map Index listed a 7.5 minute map covering the transmitter site proposed. We were informed that no 7.5 minute map was published for the area but a 15 minute map was available. This was the map we used." Nothing in the Commission's tenderability standards as enunciated in Docket 84-750 contemplates the use of a 7.5 x 15 minute hybrid map in lieu of the pure 7.5 and 15 minute quadrangles traditionally and consistently used to demonstrate transmitter site locations. The standards simply require the submission of a 7.5 minute map, if available. If a 7.5 minute map is not available, then applicants are free to use any suitable official map with proper scale and accuracy to permit the Commission's staff to verify the coordinates of the transmitter site specified.

5. In any event, Agape's petition does nothing more than suggest that a larger map was available in a single Vermont bookstore in January 1988. This claim falls far short of demonstrating the general availability of that map or its reasonable accessibility to South's engineer. In any event, the purpose of the map has been served, as the Commission's staff was able to verify the location and height of South's site sufficiently to permit its application to be accepted for tender. That purpose having been served, grant of the relief requested by Agape, even if justified, would serve no useful purpose.

6. Agape also asserts that the South application should be dismissed because the original application did not contain a sufficient showing of facts in support of the request for waiver of our spacing rules. Apparently, Agape is aware that the original defect, if any, could be corrected by the submission of a timely amendment. Otherwise, it would not have made its argument concerning the original application until after it had tried to establish that the amendment was unacceptable. That such defects may be corrected by the filing of a timely amendment is clearly established by *Teton Broadcasting, Ltd. Partnership*, 61 RR2d 1288, 1291 (1986), in which the Commission dismissed an application because of the insufficiency of an original request for waiver, but expressly pointed out that the dismissal resulted from the applicant's failure to file a perfecting amendment either during the 30-day window

filing period or the subsequent amendment period provided after notice of acceptance for tender. South submitted a curative amendment on April 20, 1988 within the period for amendment as of right. Accordingly, Agape's Petition to Dismiss the South will be denied on both counts.

7. *Keene*. On October 3, 1988, Agape filed a Petition to Deny against Keene based upon the alleged failure of the Keene application to have satisfied the Commission's tenderability standards in that Keene failed to use a 7.5 minute series U.S. Geological Survey Topographical quadrangle map in accord with Section 73.3584 of the Commission's Rules. In his opposition, dated October 3, 1988, Keene has submitted the declaration of Robert M. Lund, Keene's consulting engineer who prepared its application. As noted herein, similar factors were operative with respect to the South application. As attested to by Mr. Lund, his procedure was to order USGS maps from a source which routinely advised him of updatings or, had he been given the map directly by a third party, he would have checked it against a current index of maps which had been provided to him by the distributor. Thus, Keene's engineer used a system of safeguards upon which he was able to derive a reasonable degree of assurance that a 7.5 minute map was not available for his use. Since we have discussed the same 7.5 minute map issue with respect to South, and arrive at the same conclusion with respect to Keene, the Petition to Deny filed by Agape against Keene will be denied.

8. *Agape*. Section II, Item 4 of FCC Form 301 (October, 1986) requires that an applicant specify the home address of each of its principals. Agape has not completed Item 4 correctly, giving a post office box number for partners Nelson Chico Morales and Brian Dodge. Accordingly, Agape must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

9. *FAA*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by South and Agape would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

10. *Areas and Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

11. *Late - Filed Amendments*. South and Agape have petitioned for leave to amend their applications on the dates specified below. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
South	August 23, 1988; December 27, 1988
Agape	March 20, 1989

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by South and Agape would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That the Petition to Dismiss filed by Agape against the South application IS DENIED.

15. IT IS FURTHER ORDERED, That the Petition to Deny filed by Agape against the Keene application IS DENIED.

16. IT IS FURTHER ORDERED, That Agape shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by South and Agape ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

19. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

20. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section

73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 90-34

In the Matter of

Amendment of Part 90 of the Commission's Rules to Permit The Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence from Co-Channel Licensees — RM-6666

NOTICE OF PROPOSED RULE MAKING

Adopted: January 25, 1990; Released: February 28, 1990

By the Commission:

I. INTRODUCTION

1. The American SMR Network Association, Inc. (ASNA) filed a petition for rule making seeking to amend our Rules to expedite the processing of license applications for trunked Specialized Mobile Radio (SMR) systems located less than 70 miles from co-channel systems.[1] Under current policy, we grant such "short-spaced" applications if all affected licensees concur, but only on a waiver basis.[2] In response to a Public Notice of ASNA's petition,[3] we received comments from American Mobile Data Communications, Inc. (AMDC), the National Association of Business and Educational Radio, Inc. (NABER), and Motorola, Inc.[4] Each commenter supports ASNA's proposal. Upon review of the record of this proceeding we have decided to issue this *Notice of Proposed Rule Making*.

II. BACKGROUND

2. Our Rules require systems licensed on frequencies in the SMR Category to be located no less than 70 miles from co-channel systems. *See* 47 C.F.R. § 90.621(b).[5] In evaluating requests for waivers of this mileage separation requirement, the Private Radio Bureau generally considers two factors. First, all potentially affected co-channel licensees should agree to the applicant's proposed location. Second, all concurring licensees' co-channel systems should be constructed and fully operational. The Bureau routinely grants waiver requests that make both of these showings.[6] *See* note 2, *supra*. The fact that these applications require waivers, however, delays their grant. ASNA suggests that we eliminate the need for waivers when applicants satisfy our two existing criteria.

III. PETITION AND COMMENTS

3. In support of its position, ASNA argues that its proposal would conserve Commission resources and speed application processing time by enabling the staff to use the same procedures applied to other routine applications. ASNA Petition at 5. ASNA also states that a rule change is desirable because the use of short-spacing agreements is widely accepted in the SMR industry and consistent with our existing policies. *Id.* at 4-5. Furthermore, ASNA argues that short-spacing permits more flexibility in the assignment of SMR stations and increases frequency reuse. *Id.* at 4-7. At the same time, ASNA observes that no party's rights would be compromised because only those parties who voluntarily sign letters of concurrence would be affected. *Id.* at 7.

4. All of the commenters agree that waiver procedures are unnecessary and cause undue delay when applications are based on short-spacing agreements between consenting SMR licensees. AMDC Comments at 2; NABER Comments at 3; Motorola Comments at 2. NABER and Motorola support ASNA's petition completely while AMDC presents a modified proposal in which concurring licensees' co-channel systems need not be constructed and fully operational. AMDC Comments at 2-3. Additionally, AMDC asks us to clarify that eliminating the waiver requirement for applications based on concurrences would not make the waiver process unavailable to applicants basing their short-spaced applications on engineering studies. *Id.* at 3-4.

IV. PROPOSAL

5. After analysis of the proposal and comments, we believe that ASNA's proposal has merit. Since 1986, when we adopted our current policy concerning short-spacing, we have routinely granted waivers to SMR applicants submitting letters of concurrence from constructed co-channel licensees. Rather than continuing to use waiver procedures, it would be administratively convenient and consistent with the public interest to dispense with the waiver requirement in these circumstances. This is especially true as available spectrum and Commission resources become scarcer. By adopting the proposal we would foster spectrum efficiency because short-spacing allows for more intensive use of the spectrum. At the same time, we would conserve resources because our staff would be able to process short-spaced applications more quickly. Consistent with our regulatory treatment of short-spacing agreements elsewhere in the rules governing the private radio services, *see, e.g.*, 47 C.F.R. § 94.15(b)(2), our proposal would require the applicant and concurring licensees to agree to accept any interference resulting from short-spacing. Because licensees would maintain their current mileage separations unless they voluntarily agreed otherwise, however, our action would not compromise any licensee's rights.

6. ASNA argues that we should retain our existing requirement that a concurring licensee's systems be constructed and fully operational. *See* ASNA Comments at 4-5. This requirement may, for example, prevent licensees who do not intend to use their sites from profiting from their failure to use the channels. AMDC, on the other hand, argues that it makes no sense to require an applicant to obtain a waiver if the facility that the Commission's rules are protecting may never be built. AMDC Comments at 3. AMDC suggests we prevent speculation by requiring a consenting licensee of an unbuilt system to certify that no consideration has been paid or promised in exchange for the licensee's concurrence. *Id.* at n. 4.

7. Our proposal would make current short-spacing policy a part of our rules. Under current policy, we consider the construction of concurring systems as a supporting factor justifying grant of a waiver. Our proposed rule would not eliminate this requirement. We request that commenters specifically address this issue, however, so that we can have a complete record upon which to base our final decision. Applicants wishing to short-space with an unconstructed system will still have the opportunity to have their requests considered on a case-by-case basis. We request comment on what type of showing applicants should be required to make in order to receive permission to short-space with an unconstructed system.[7] We also would continue to process on a case-by-case basis those short-spacing requests based on technical studies. Thus, even if an applicant could not obtain a short-spacing agreement, we might approve its proposed location if it showed that sufficient protection were provided to co-channel licensees.

8. Finally, we must consider the scope of our proposed rule. ASNA limits its proposal to trunked SMR operations. Our current waiver policy, however, applies to all applications for SMR Category channels. Because there are no application processing differences between conventional and trunked systems using SMR Category channels, we propose, consistent with our existing policy, to apply the new rule to all applications for SMR Category channels.[8] *See* 47 C.F.R. §§ 90.617, 90.619.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason For Action

9. The Commission is proposing this rule change to expedite processing of license applications for Specialized Mobile Radio systems located less than the required mileage separation from co-channel systems. This action will foster spectrum efficiency by allowing more intensive use of the spectrum, and will conserve administrative resources.

Legal Basis

10. The proposed amendments to the Commission's Rules, as set forth in the attached Appendix, are issued under the authority contained in Sections 4(i), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r) and 332(a).

Reporting, recordkeeping and other compliance requirements

11. This action would require applicants who wish to short-space to file, at the time of application, letters of concurrence from licensees of systems located within 70 miles of their proposed sites. This collection of information requirement has been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act.

Federal rules which overlap, duplicate, or conflict with this rule

12. None.

Description, potential impact, and number of small entities affected

13. Small businesses would be positively affected by this proposal because it would expedite processing of short-spaced applications without any detriment to existing licensees' operations, and would permit license grants to be made more quickly.

Any significant alternatives minimizing the impact on small entities and consistent with the stated objectives

14. Aside from maintaining the *status quo*, there are no alternatives other than those considered in this *Notice of Proposed Rule Making*.

VI. PAPERWORK REDUCTION ACT STATEMENT

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act. Persons wishing to address the collection of information aspect of this proceeding should submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

VII. PROCEDURAL MATTERS

16. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

17. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion to the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an ex parte presentation.

18. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an ex parte presentation. 47 C.F.R. § 1.1206.

19. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested persons may file comments on or before **April 23, 1990,** and reply comments on or before **May 8, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

20. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 C.F.R. Part 90 of the Commission's Rules is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4, 3030, 48 Stat., as amended, 1066, 1082; 47 U. S. C. 154, 303.

2. 47 C.F.R. § 90.621 is amended by adding a new paragraph (b)(4) to read as follows:

§ 90. 621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(4) The separation between co-channel systems may be less than the separations defined above if the applicant submits with its application letters of concurrence indicating that the applicant and each co-channel licensee within the specified mileage separation agree to accept any interference resulting from the reduced separation between their systems. Each letter from a co-channel licensee must certify that the system of the concurring licensee is constructed and fully operational.

* * * * *

FOOTNOTES

[1] ASNA, Petition for Rule Change, RM-6666 (January 24, 1989) (ASNA Petition).

[2] Public Notice, Clarification and Simplification of Procedures for 800 MHz Systems in the Private Land Mobile Services, Mimeo No. 160 (October 14, 1986).

[3] Public Notice, Mimeo No. 1767 (February 3, 1989).

[4] Comments of American Mobile Data Communications, Inc., RM-6666 (March 6, 1989) (AMDC Comments); Comments of National Association of Business and Educational Radio, Inc., RM-6666 (March 6, 1989) (NABER Comments); Comments of Motorola, RM-6666 (March 6, 1989) (Motorola Comments).

[5] The 70 mile separation was derived with quality of service, frequency reuse, and ease of licensing in mind. It does not, however, guarantee freedom from interference. Second Report and Order, Future Use of the Frequency Band 806-960 MHz, Docket No. 18262, 46 FCC 2d 752, 775 (1974). In some areas of the country, our Rules require mileage separations greater than 70 miles. *See* 47 C.F.R. § 90.621. In other areas, mileage separations of less than 70 miles may be sufficient, warranting a waiver of the requirement.

[6] We also will waive § 90.621(b), absent concurrences, if the applicant provides another sufficient justification. 47 C.F.R. § 90.151; WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The applicant may, for example, make a technical showing that short-spacing will not result in harmful interference due to the terrain of an area or the technical features of a particular system.

[7] We also ask for comment on whether, as AMDC suggests, we should be concerned about any payments licensees of unconstructed systems may receive from waiver applicants to obtain the licensees' concurrence.

[8] SMR systems can also be licensed on the 150 conventional channels governed by Section 90.615 of the Rules, 47 C.F.R. § 90.615. These channels are not, however, considered part of the SMR Category. Unlike channels in the SMR Category, authorization of systems on these 150 channels are not based on set mileage separations and require a recommendation from a frequency coordinator. Due to these differences, our rule change does not extend to SMR operations on the 150 conventional channels.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 87-390

In the Matter of

Amendment of Parts 2 and 22 of
the Commission's Rules to Permit
Liberalization of Technology and
Auxiliary Service Offerings in the
Domestic Public Cellular Radio
Telecommunications Service

MEMORANDUM OPINION AND ORDER

Adopted: February 15, 1990; Released: February 28, 1990

By the Commission:

INTRODUCTION

1. By this action, we grant in part a petition filed by the Cellular Telecommunications Industry Association (CTIA) seeking reconsideration of certain aspects of the *Report and Order* in this proceeding.[1] In the *Report and Order*, the Commission amended the rules for the Domestic Public Cellular Radio Telecommunications Service (cellular radio service) to facilitate the introduction of advanced cellular technologies and to permit the operation of auxiliary common carrier services on cellular frequencies. The rule changes adopted herein relax and clarify the filing requirements associated with provision of fixed cellular services under Section 22.308 of the rules and Basic Exchange Telecommunications Radio Service (BETRS)[2] under Section 22.930 of the rules. [3]

BACKGROUND

2. The rules adopted in the *Report and Order* provide a regulatory structure that will facilitate the implementation of a new generation of cellular technology and services while preserving conventional cellular service. Cellular radio carriers now have the option of using advanced cellular technologies and providing auxiliary common carrier services on a secondary basis in the radio spectrum allocated for cellular service. The rules for this new authority are contained in Section 22.930 and are referred to as, "the cellular service option." Section 22.930 specifies the requirements for use of new technology and provision of auxiliary services. The Commission also added a new paragraph (e) to Section 22.911, which addresses permissible communications.[4] Paragraph (e) states that cellular licensees may offer BETRS under the cellular service option, while other fixed cellular services may be offered pursuant to the incidental communications rules of Section 22.308.

3. In response to the *Report and Order*, CTIA filed a petition requesting modification of two rule sections to relax the filing requirements that pertain to fixed cellular service and BETRS. First, CTIA submits that the filing requirement for subscriber equipment used for BETRS under the cellular service option needs clarification. CTIA points out that paragraph (g) of Section 22.930 calls for detailed technical information to be submitted for BETRS.[5] CTIA asserts that this requirement is too burdensome in cases where a BETRS subscriber radio is in fact simply a conventional cellular radio used at a fixed location. Further, CTIA states that this rule is inconsistent with the Commission's 1983 decision to amend Part 22 to eliminate the individual licensing requirement for low-power subscriber radios in the Rural Radio Service.[6] Accordingly, CTIA suggests adding language to Section 22.930(g) to provide that conventional cellular mobile radios used as fixed radios do not have to comply with the notification requirements of Section 22.930.[7]

4. Second, CTIA requests amendment of Section 22.911(e)[8] of the rules to identify the filing requirements that pertain to services offered on an incidental basis.[9] Specifically, CTIA requests amendment of Section 22.911(e) to clearly indicate that a licensee operating a fixed incidental service under Section 22.308 is allowed to submit a blanket notification of that service.[10] CTIA states that neither the *Report and Order* nor Section 22.308 of the rules discuss in detail the requirements for licensees to notify the Commission of the operation of an incidental service pursuant to Section 22.308. It observes that the Commission has, in fact, stated elsewhere that blanket notification is permitted under Section 22.308.[11] However, CTIA is concerned that a licensee operating a fixed incidental service under Sections 22.308 and 22.911(e) could easily make the incorrect conclusion that the Commission must be notified before providing service to each individual fixed subscriber radio within the system.

5. A number of parties filed oppositions and comments in response to CTIA's petition.[12] The oppositions were primarily from organizations representing the interests of local exchange carriers (LECs) and state regulatory authorities. Opposing parties are against relaxation of the filing requirements of Section 22.930, arguing that those requirements were adopted to protect against any detrimental impact on traditional cellular service. For instance, NARUC implies that traditional cellular service should be protected from possible adverse impact that may result from cellular radios used for BETRS. Specifically, NARUC argues that since the cellular service option rules were written for the provision of auxiliary services, and since BETRS is an auxiliary cellular service, BETRS should be subject to the requirements of the cellular service option, Section 22.930, and not the less stringent requirements of an incidental service, Section 22.308.

6. Further, opposing parties are concerned that because Section 22.911 does not specifically require state authorization for fixed cellular service as it does for BETRS, the current rules enable cellular operators to offer radio telephone services under Section 22.308 with minimal federal oversight and without state regulation. They point out that the current rules could be interpreted to mean that cellular licensees can offer fixed cellular telephone service on an incidental basis pursuant to Section 22.308 or as a cellular service option pursuant to Section 22.930. Opposing parties believe that the provision of what amounts to BETRS under Section 22.308 would give cellular operators an unfair competitive advantage over LECs. Specifically, opposing parties state that Section 22.308 does not

appear to give the states the right to regulate fixed telephone service provided by cellular radios, while LECs providing BETRS are subject to detailed requirements under Part 22 of the Rules and are also subject to state regulation. Therefore, LECs and state regulatory interests assert that a statement should be added to Section 22.911(e) to emphasize that fixed cellular service provided as an incidental communications service is subject to state regulation.

7. On reply, CTIA suggests that its petition has been misconstrued by some commenting parties as an attempt to circumvent state regulation of BETRS. CTIA states that it has no such desire. It submits that its requests are made solely in the interest of eliminating unnecessary filing requirements, and the clarifications it seeks would not hinder the effective regulatory oversight of fixed cellular service at the state or federal level.

DISCUSSION

8. We agree with CTIA that it would be unnecessarily burdensome to apply the filing requirements of Section 22.930(g) to conventional cellular mobile radios used at fixed locations for BETRS. The comprehensive filing requirements of paragraph (g) are intended for advanced technology base stations or auxiliary service base stations, since base stations may operate at power levels of up to 500 watts of effective radiated power (ERP). Such detailed information is not needed for BETRS subscriber radios that conform to OST 53,[13] do not exceed 7 watts ERP, and whose antenna height conforms to the criteria in Section 17.7 of the rules. It was not our intention to apply the paragraph (g) requirements to cellular mobile radios used for fixed BETRS service.

9. However, we are not adopting CTIA's suggested language for Section 22.930(g), as it would eliminate all notification requirements for BETRS subscriber radios. Rather, we believe it is appropriate that BETRS radios be treated the same as mobile radios used for providing advanced cellular or auxiliary services and therefore, be subject to the filing requirements of paragraph (f) of Section 22.930. This approach also addresses the opposition's concerns for maintaining certain requirements to protect traditional cellular service. Accordingly, we are amending paragraph (f) to indicate that BETRS subscriber radios are subject to the filing requirements for mobile stations operating under the cellular service option and paragraph (g) to exclude such radios from the filing requirements for base stations. We are also moving the provision stating, "the only fixed service authorized under the cellular service option is Basic Exchange Telecommunications Radio Service," to the introductory paragraph of Section 22.930.

10. In examining CTIA's request to amend Section 22.911(e), we note that prior to the adoption of the *Report and Order*, cellular licensees had been offering BETRS on an incidental basis under Section 22.308. The Commission added paragraph (e) to Section 22.911 to point out that cellular licensees have the option of operating BETRS under the cellular service option and that they may operate other fixed cellular services under Section 22.308. However, comments in response to CTIA's petition have brought to our attention the ambiguity that exists in distinguishing between BETRS and "other fixed cellular services," and that Section 22.911(e) could be interpreted as an indication that BETRS may not be operated as an incidental service under Section 22.308. It therefore appears that paragraph (e) is not serving its intended purpose, but rather is causing confusion. Also, in view of the fact that BETRS may be offered on an incidental basis pursuant to Section 22.308 or as a cellular service option pursuant to Section 22.930, the distinction in paragraph (e), in fact, is unnecessary. We emphasize that any cellular licensee may provide incidental communication services, including BETRS, other fixed services and mobile services under Section 22.308 so long as those services operate in conformance with the conventional cellular technical standards. Licensees may also provide BETRS under the cellular service option with conventional or advanced technology.[14]

11. With regard to reference to applicable state regulation in Section 22.911(e), we recognize the opposition is largely concerned with the possibility of cellular licensees providing fixed cellular or BETRS service without state authorization. We have pointed out throughout this proceeding that we have no intention of preempting state regulation as it pertains to cellular licensees that choose to offer fixed services. We believe the opposing parties' concerns stem from the fact that Section 22.911(e) specifies that state authorization is required, where applicable, for the provision of BETRS, but is silent as to whether state authorization is required for other fixed cellular services. We note that Section 22.308, Incidental communication services, is also silent concerning state authority to regulate fixed cellular services.

12. In general we do not codify the states' right to regulate specific intrastate common carrier services. A State Commission's authority to regulate an intrastate common carrier communications service is governed by state law. Likewise, including a state certification requirement in our rules cannot confer jurisdiction on a State Commission which does not have such jurisdiction pursuant to state law. Adding a requirement that state authorization should be obtained is, therefore, mere surplus regulation. We point out that the need to obtain state authorization for fixed-cellular service under either Section 22.308 or Section 22.930 is the same. Thus, we perceive no competitive problems between LECs and cellular operators will arise as asserted by the opposing parties. Accordingly, we do not find it is necessary for Section 22.911(e) or Section 22.930 to specify that state regulation is required for the provision of fixed cellular services. Nor, as we mentioned earlier, is it necessary to distinguish between BETRS and other fixed service, since BETRS is a fixed service. As there is no need for the provisions of paragraph (e) of Section 22.911, we are eliminating it from the rules.

13. In view of our decision to eliminate Section 22.911(e), CTIA's request to amend that rule to permit blanket notifications is moot. In this regard, we observe that the Commission previously has stated that blanket notifications are permitted under Section 22.308.[15]

14. Accordingly, IT IS ORDERED that CTIA's petition IS GRANTED as discussed above and Sections 22.911 and 22.930 ARE AMENDED as specified in the Appendix below effective 30 days after publication in the Federal Register.

15. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 22 of Title 47 of the Code of Regulations is amended to read as follows:

PART 22 -- PUBLIC MOBILE SERVICE

1. The authority citation in Part 22 continues to read as follows:

AUTHORITY: 47 U. S. C. 154, 303, unless otherwise noted.

2. Section 22.911 is amended by removing paragraph (e).

3. Section 22.930 is amended by revising the introductory paragraph, paragraph (f) and paragraph (g) to read as follows:

Section 22. 930 Special Provisions for Alternative Cellular Technologies and Auxiliary Services.

Provided that interference to other cellular systems is not created, and service to roamers whose mobile equipment conforms to OST 53 is offered, cellular licensees may employ alternative cellular technologies and auxiliary common carrier services in the frequency bands 824-849 MHz and 869-894 MHz, except on the cellular control channels. The only fixed service permitted under this section is Basic Exchange Telecommunications Radio Service. These special provisions will be referred to as the cellular service option. The cellular service option may be exercised subject to the following requirements:

* * * * *

(f) For mobile stations and subscriber stations used to provide Basic Exchange Telecommunications Radio Service, the information in paragraph (b) must include: the number to be placed in service, the manufacturer's name, the FCC identification number, and the specific frequencies of operation. In addition, information shall include emission, bandwidth and frequency tolerance data demonstrating compliance with the rules.

(g) For base stations providing services under this section, the information in paragraph (b) must include: the manufacturer's name, the FCC identification number, the model number, the rated output power, the specified frequencies of operation, the frequency tolerance, the modulation type, the emission profile, and the antenna location, elevation, orientation and pattern. In addition, information shall include calculations at eight equally spaced intervals around the service contour where calculations verify compliance with the aggregate field strength limit.

* * * * *

FOOTNOTES

[1] *See Report and Order*, GEN Docket No. 87-390, adopted October 13, 1988, 3 FCC Rcd 7033 (1988).

[2] BETRS is a radio service that can be used to provide local exchange service in rural areas. It has no specified technology, but involves the use of mobile frequencies in radio loops between a basic exchange telephone subscriber and a telephone company central office. It is intended to be an extension of intrastate basic exchange service. *See Report and Order*, CC Docket 86-495, 3 FCC Rcd 214 (1988). *See also* 47 CFR Section 22.2 and 47 CFR 22, Subpart G of the Commission's Rules.

[3] *See* 47 CFR 22.308. *See also* 47 CFR 22.930 (1989).

[4] *See* 47 CFR 22.911(e) (1989).

[5] 47 CFR Section 22.930(g) provides: "The only fixed service authorized under the cellular service option is Basic Exchange Telecommunications Radio. For this service, the information required by paragraph (b) must include sufficient technical data and calculations to verify compliance with the aggregate field strength limit. Calculations are required at eight equally spaced intervals around the service contour. Other data required for fixed transmitters are the manufacturer's name, model number, rated output power, operating frequency, frequency tolerance, modulation type, emission profile, and antenna location, elevation, orientation, and pattern."

[6] *See Report and Order*, CC Docket No. 80-57, 95 FCC 2d 769 (1983).

[7] Specifically, CTIA proposes adding the following language to Section 22.930(g): "Fixed units in this service which conform to OST 53 and do not exceed seven watts effective radiated power and whose antenna height does not exceed the criteria in Section 17.7 of this chapter, are not required to comply with the notification requirements of this Section."

[8] Section 22.911(e) states: "Cellular operators and resellers so authorized by their State regulatory entities may offer fixed basic exchange telephone service in RSAs and rural parts of MSAs. Other fixed cellular service may be offered on an incidental basis pursuant to Section 22.308 of these Rules."

[9] Licensees of Public Mobile Services may provide services other than the primary services that they are licensed to carry, provided that the other services are offered on an incidental basis. Section 22.308 of 47 CFR, Incidental communications, specifies the regulations for incidental communication services.

[10] Under the blanket notification approach, a licensee submits only a single notification that it intends to provide a particular fixed incidental service. It is not required to specify each fixed location served and need not submit notification each time a fixed subscriber is added. For instance, CTIA believes that if a cellular licensee wished to provide service to fixed units used in alarm systems, a single notification letter to the Commission stating that fixed units in alarm systems will be served throughout the MSA should be sufficient under Section 22.308.

[11] *See Memorandum Opinion and Order*, RM-4882, (Amendment of Subpart K of the Commission's Rules to Facilitate the Development of Cellular Radio Telecommunications Service in the Rural Areas of the Country), 102 FCC 2d 470 (1986). With regard to Section 22.308, the Commission stated that the licensee need not specify each fixed location and need not submit notification each time a fixed subscriber is added.

[12] Pleadings were filed by CTIA, National Telephone Cooperative Association (NTCA), Organization for the Protection & Advancement of Small Telephone Companies (OPASTCO), United States Telephone Association (USTA), National Association of Regulatory Utility Commissioners (NARUC), International Mobile Machines Corporation (IMM), McCaw Cellular Communications, and BellSouth Corporation/BellSouth Mobility Incorporated.

[13] *See Cellular Mobile Station - Land Station Compatibility Specification*, OST Bulletin No. 53, July 1983.

[14] We realize that cellular carriers may wish to provide a non-BETRS, fixed-incidental service with equipment that is not compatible with the standards set forth in OST Bulletin No. 53. Technically, such a service cannot be provided pursuant to Section 22.308 because the equipment does not conform to OST 53. Nor can such a service be provided pursuant to Section 22.930 because the only fixed service permitted under Section 22.930 is BETRS. We recognize that there may be valid public interest reasons for allowing non-BETRS, fixed service with equipment that is not compatible with the standards of OST 53. Therefore, we point out that a carrier desiring to provide a non-BETRS, fixed service using non-standard technology has the option of filing a waiver to permit such use. Any waiver must, at a minimum, demonstrate that existing cellular service will not be adversely affected and all other requirements of Section 22.930 will be met.

[15] *See Report and Order*, CC Docket No. 80-57, 95 FCC 2d 769 (1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition for Rule Making RM- 7246
filed by
General Communication, Inc.

ORDER

Adopted: February 22, 1990; Released: February 23, 1990

By the Chief, Domestic Facilities Division:

1. United Utilities, Inc. (United), by its counsel, has requested an extension of time until March 12, 1990 in which to respond to the above-captioned petition for Rule Making filed by General Communication, Inc. (GCI). GCI's petition requests the Commission to alter its policies governing the ownership and operation of domestic satellite earth stations in the bush communities in Alaska. Comments on GCI's petition are due on March 2, 1990.

2. United requests a ten-day extension of this date. It states that GCI was contacted and advised United that it does not object to the extension.

3. United's request is granted. The limited period of additional time will not delay Commission consideration of GCI's petition, and GCI has no objection to the extension request. Accordingly, pursuant to Section 0.291 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.291, IT IS ORDERED that the period of time to file statements in support of or in opposition to General Communication, Inc.'s petition for Rule Making IS EXTENDED to March 12, 1990. IT IS FURTHER ORDERED that the date for filing replies to the March 12, 1990 pleadings IS EXTENDED to March 27, 1990.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-68

In re Applications of

MODESTO BROADCAST GROUP (hereafter "MBG")	File No. BPH-880229MB
HARRY S. MCMURRAY (hereafter "McMurray")	File No. BPH-880301MP
STANISLAUS COMMUNICATIONS CORPORATION (hereafter "Stanislaus")	File No. BPH-880301MR
MODESTO COMMUNICATIONS CORPORATION (hereafter "MCC")	File No. BPH-880301NC
JUAN MANUEL AYALA (hereafter "Ayala")	File No. BPH-880301NF
EILEEN S. LAPIN, DOUGLAS M. LAPIN AND STANLEY P. LAPIN d/b/a LAPINCO (hereafter "Lapinco")	File No. BPH-880301NJ
CHIA-LING FARNHAM (hereafter "Farnham")	File No. BPH-880301NY
FOURWAY FM BROADCASTING LIMITED PARTNERSHIP (hereafter "Fourway")	File No. BPH-880301OC
GREAT SCOTT BROADCASTING (hereafter "Great Scott")	File No. BPH-880301OG
JUAREZ AND FLORES, INC. (hereafter "Juarez and Florez")	File No. BPH-880301OJ
BCD LIMITED PARTNERSHIP (hereafter "BCD")	File No. BPH-880301OS
THOM REINSTEIN COMMUNICATIONS, A CALIFORNIA LIMITED PARTNERSHIP (hereafter "Reinstein")	File No. BPH-880301OU
PAMELA R. JONES (hereafter "Jones")	File No. BPH-880301OY

For Construction Permit for a
New FM Station on Channel 230A
in Modesto, California.

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: March 1, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. Stanislaus amended its application on November 14, 1989 to report that its principal, Frank Imburg, became employed as sales manager of Station KASH(AM), Modesto, California on October 16, 1989. The amendment includes a pledge that Mr. Imburg will resign this or any other employment at KASH(AM) upon grant of the Stanislaus application. Because Mr. Imburg's continued employment at KASH(AM) following grant of the instant application may affect Stanislaus' ability to comply with the Commission's cross-interest policy, an appropriate divestiture condition will be specified. *See Reexamination of the Commission's Cross-Interest Policy*, 4 FCC 2d 2208 (1989) (Policy Statement); 4 FCC 2035 (1989) (Further Notice of Inquiry/Notice of Proposed Rule Making); 2 FCC Rcd 3699 (1987)(Notice of Inquiry).

3. *Farnham*. In response to Section III, FCC Form 301 (October 1986), which requests information on the applicant's financial qualifications, Farnham has certified that there are no sufficient net liquid assets on hand nor are sufficient funds available from committed sources to construct and operate the station for three months without revenue. Accordingly, an appropriate financial issue will be specified.

4. *Fourway*. Information before the Commission indicates that Fourway was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Oliver Springs, Tennessee	88-201
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party in interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolve these issues. These unresolved issues call into question Fourway's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Fourway in this proceeding.

5. *Juarez and Flores.* In Section II, Item 1, FCC Form 301, October 1986, which concerns the structure of the applicant, Juarez and Flores indicates that the applicant is a corporation, but qualifies this representation with a statement that the applicant is in the process of incorporating under the laws of the state of California. Moreover, the applicant has indicated, in Section II, Item 9(a) and (b) that it is not in violation of the provisions of 47 U.S.C. § 310(b), relating to interests of aliens and foreign governments, and that no funds, credits or other financial assistance for the construction, purchase or operation of the station will be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents. However, the answers indicated in Item 9 are qualified by representations made in Exhibit 1 to the application, which states that Martha Flores, who is or will be 40% voting shareholder of the applicant, will provide funding to the applicant. Exhibit 1 further states that Mrs. Flores' husband, although a resident of California, is a Mexican citizen and that some of the funding may come, in part, from assets deemed to be community property under the laws of the state of California. Because we are concerned that the representations set forth in Exhibit 1 may compromise the applicant's compliance with the provisions of 47 U.S.C. § 310(b), which restricts alien ownership and control of broadcast licenses, an appropriate alien control issue will be specified.

6. *Jones.* Jones proposes to collocate her antenna on an existing tower also being used by KFIV(FM), but her application contains coordinates for that tower which are inconsistent with those contained in Commission records. According to the Commission's data base, the accepted coordinates for this tower are 37 ~ 40' 46.5" North Latitude, 120 ~ 55' 28" West Longitude. However, on the transmitter site map, Jones plots the coordinates for the tower at 37 ~ 40' 47" North Latitude, 120 ~, 55', *24* " West Longitude, which results in a discrepancy of 4" for the West Longitude coordinate as plotted on the site map. Because Jones clearly proposes to locate on an existing tower licensed to another Commission licensee, and because specific reference is made to this existing tower in the application, the staff could, drawing on the application as a whole, confidently and reliably verify the transmitter location by taking official notice of the site coordinates found in the Commission's records for the licensed collocated facilities. Accordingly, Jones' application is acceptable for filing; however, Jones will be required to file a corrective amendment with the presiding Administrative Law Judge within 30 days of the release of this Order.

7. *Other matters.* In response to Section VI, FCC Form 301, the applicants below have indicated that they will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396(A), the 5-Point Model EEO Program. The EEO Programs submitted by the listed applicants are incomplete or otherwise deficient in the manner described. Accordingly, the listed applicants will be required to file amended EEO Programs with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANT	DEFICIENCY
MBG	Failed to identify specific sources of recruitment specializing in women candidates.
Farnham	Failed to identify specific sources of recruitment specializing in minority candidates.

8. The applicants below petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENTS FILED
McMurray	November 15, 1988; December 29, 1988; March 8, 1989; March 30, 1989; April 6, 1989.
Stanislaus	November 14, 1989
Ayala	December 13, 1988
Lapinco	August 17, 1988
Fourway	May 30, 1989; June 27, 1989; September 13, 1989.
Great Scott	February 22, 1989; October 12, 1989; December 12, 1989.
BCD	July 14, 1989
Jones	March 14, 1989

9. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the following applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by BCD would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

10. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the residence address of each of its principals. McMurray has not completed Item 4 correctly because a post office drawer has been given as the residence address of the individual applicant. Stanislaus has not completed Item 4 correctly because no number or street address has been given for the applicant, Stanislaus Communications Corporation. Lapinco has also failed to complete Item 4 correctly. Lapinco gives no address for the applicant, a general partnership, or its individual partners, Eileen S. Lapin, Douglas M. Lapin and Stanley P. Lapin. Accordingly, McMurray, Stanislaus and Lapinco each will be required to submit amendments which give all the information required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Farnham, whether the applicant is financially qualified.

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Fourway.

3. To determine whether Fourway's organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to Issues 2 and 3 above, whether Fourway possesses the basic qualifications to be a licensee of the facilities sought herein.

5. To determine whether Juarez and Flores is owned or controlled by aliens or their representatives in violation of 47 U.S.C. § 310(b).

6. To determine whether there is a reasonable possibility that the tower height and location proposed by BCD would constitute a hazard to air navigation.

7. To determine which of the proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That in the event of grant of Stanislaus' application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that it has divested itself of all interests in and severed all connections with Station KASH(AM), Modesto, California.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Jones shall submit to the presiding Administrative Law Judge a corrective amendment in accordance with paragraph 6 hereinabove.

16. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, MBG and Farnham shall submit Section VI information in accordance with the requirement of 47 C.F.R. § 73.2080(c) to the presiding Administrative Law Judge.

17. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by McMurray, Stanislaus, Ayala, Lapinco, Fourway, Great Scott, BCD, and Jones ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

18. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

19. IT IS FURTHER ORDERED, That McMurray, Stanislaus and Lapinco shall each submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

20. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

21. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

22. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed therein and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-79

In re Applications of

PHASE ONE COMMUNICATIONS, INC. (hereafter: Phase)	File No. BPH-871228ML
DIANNE M. SAWYER (hereafter: Sawyer)	File No. BPH-871229MK
MANCHESTER COMMUNICATIONS, INC. (hereafter: MCI)	File No. BPH-871230MI
AILEEN BURNETT SARTIN (hereafter: Sartin)	File No. BPH-871231MN
COFFEE COUNTY BROADCASTING, COMPANY INC. (hereafter: Coffee)	File No. BPH-871231MR
TENNCOM, LTD. (hereafter: Tenncom)	File No. BPH-871231NB

For Construction Permit for a
New FM Station on Channel 268A
in Manchester, Tennessee

HEARING DESIGNATION ORDER

Adopted: February 16, 1990; Released: March 1, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *MCI.* Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. MCI has not completed Item 4 correctly, giving a post office box number as the residence for Patricia and Christopher Freeze. Accordingly, MCI must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

3. *Coffee.* Coffee has erroneously listed its coordinates on FCC Form 301, Section V-B, Item 2B as 25° 25' 01" latitude and 86° 10' 16" longitude. These coordinates would place its transmitter in the Gulf of Mexico over 200 miles from the nearest land area in the United States. However, the geographic coordinates found on Coffee's site map and in other parts of its application, and in its request for FAA clearance submitted with the application, show the correct geographic coordinates of the site as 35° 25' 01" latitude and 86° 10' 16" longitude. Therefore, the staff could, "drawing on the application(s) as a whole," confidently and reliably verify the transmitter location by taking notice of the site coordinates on the site map, FAA application, and other places in the application where the site coordinates are listed. Thus, the application is acceptable for filing. *See Larry Langford*, 3 FCC Rcd 4746 (1988) (Hearing Designation Order). However, Coffee shall be required to amend Section V-B, Item 2B of its application to specify the corrected latitude of 35° 25' 01". This amendment must b submitted to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. *Tenncom.* Tenncom, Ltd. is the licensee of radio station WYCQ(FM) in Shelbyville, Tennessee. Grant of Tenncom's application would create a potential duopoly problem, which would in turn violate the Commission's multiple ownership rules. However, Tenncom has indicated its intent to divest itself of these interests in the event of grant of the referenced application. Accordingly, in the event of grant of Tenncom's application, Tenncom will be required to divest itself of WYCQ(FM) prior to the commencement of program test authority.

5. *Other Matters.* Phase and MCI have petitioned for leave to amend their applications on the dates specified below. The accompanying amendments were filed after March 25, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Phase	April 21, 1988
MCI	Aug. 5, 1988; Jan. 18, 1989 (Engineering); Feb. 1, 1989 (Engineering)

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR

HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That MCI shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That Coffee shall submit an amendment which contains the information required by Section V-B, Item 2B of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

11. IT IS FURTHER ORDERED, That in the event of grant of Tenncom's application, Tenncom will be ordered to divest itself of WYCQ(FM) prior to the commencement of program test authority.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Phase and MCI ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

LEO V. CARMODY File No. 20906-CD-P/L-1-85

For authority to establish an additional facility on the frequency 152.84 MHz for one-way signaling Station KUS297 in the Public Land Mobile Service at Coxsackie, New York

and

HUDSON VALLEY MOBILE TELEPHONE, INC. File No. 21642-CD-P-1-83

For authority to establish a new one-way signaling facility on the frequency 152.84 MHz in the Public Land Mobile Service at Poughkeepsie, New York

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 1990; Released: March 1, 1990

By the Commission:

1. Hudson Valley Mobile Telephone, Inc. (Hudson Valley) and Leo Carmody filed applications for the above-captioned one-way paging facilities. Hudson Valley filed an Application for Review of the Common Carrier Bureau's partial denial of Hudson Valley's petition for partial reconsideration, *see Order on Reconsideration*, 61 Rad. Reg. 2d (P&F) 95 (Com. Car. Bur., 1986) (Order), of the Mobile Services Division's treatment of these applications. Hudson Valley requests that the Commission review the part of the Order that: (1) denied Hudson Valley's request for § 22.23(g)(2)[1] treatment of its application, and (2) denied Hudson Valley's request for dismissal of Leo V. Carmody's (Carmody) application as untimely filed.

I. BACKGROUND

2. In *Report and Order*, 13 FCC 1190, *recon denied*, 13 FCC 1242 (1949), the Commission allocated a block of frequencies to be used exclusively by wireline carriers and another block of frequencies to be used exclusively by nonwireline carriers. In 1982, we released a *Notice of Proposed Rule Making* (*NPRM*) [2] proposing to establish a policy that would permit carriers to request a waiver of such separate frequencies allocation structure (the "fence") to permit them to file applications for either block of frequencies. [3] In the Report and Order[4] that considered this proposal, we declined to alter the allocation structure, as suggested by the commenters, stating that a full reexamination of the separate allocation was beyond the scope of the proceeding.[5] Nevertheless, in lieu of adopting the waiver proposal, on the same day that we adopted the *Part 22 Rewrite*, we adopted a Notice of Proposed Rule Making[6] proposing to amend Part 22 of the Rules to eliminate the separate frequency allocation structure.

3. The *Part 22 Rewrite* set forth interim procedures for acting on applications filed for the separate allocation frequencies pending completion of the *Fence Proceeding*. In the *Part 22 Rewrite*, among other things, we stated the following with regard to applications filed for wireline frequencies after July 29, 1982: (1) non-mutually exclusive wireline applications would be granted; (2) wireline applications mutually exclusive with nonwireline applications requesting wireline frequencies with a waiver would be held in abeyance until the termination of the *Fence Proceeding;* and (3) non-mutually exclusive nonwireline applications requesting wireline frequencies with a waiver would be held in abeyance until the termination of the *Fence Proceeding*. We stated further that during the pendency of the *Fence Proceeding* the normal cut-off procedures would apply. 95 FCC 2d at 825.

4. On January 25, 1983, Poughkeepsie Radio Inc., predecessor-in-interest to Hudson Valley, a non-wireline carrier, filed an application to construct a new one-way signaling facility using 900 MHz frequencies.[7] This application was mutually exclusive with a number of other 900 MHz applications in New York. On November 14, 1984, Hudson Valley filed an amendment to the application to change the location from Poughkeepsie, New York to Ulster, New York, and to change the frequency from 900 MHz to 152.84 MHz (a wireline frequency) under the *Part 22 Rewrite* interim procedures. It requested that under § 22.23(g)(2), it not be considered newly filed.[8] Twelve days later, on November 26, 1984, Carmody filed an application for 152.84 MHz at Coxsackie, New York, which was electrically mutually exclusive with Hudson Valley's application. The Mobile Services Division returned the Hudson Valley application as defective for not including a request for waiver to use the 152.84 MHz frequency and concluded that because Hudson Valley, a non-wireline carrier, was seeking authority to use a wireline frequency pursuant to a waiver under the interim proceeding, it was not entitled to treatment under § 22.23(g)(2) of the rules.[9] On reconsideration, the Bureau found that the application did contain a waiver request to apply for the wireline frequency and reinstated the application *nunc pro tunc* as of November 14, 1984, but again denied Hudson Valley's request to retain its original filing date under § 22.23(g)(2). The Bureau reasoned that to grant § 22.23(g)(2) treatment prior to the termination of the *Fence Proceeding* would inequitably cut-off other nonwireline applicants filing for that particular wireline frequency because the 60 day cut-off period would have begun to run from the original filing date of January 25, 1983. The Bureau also denied Hudson Valley's request to dismiss Carmody's application as untimely filed.

II. CONTENTIONS OF THE PARTIES

5. In its application for review, Hudson Valley alleges that the Bureau's interpretation of the interim procedures for nonwireline applications is inconsistent with the instructions in the *Part 22 Rewrite*, *supra*, at 825, since the interim procedures stated that although applications would be held in abeyance, the normal cut-off procedures

would apply. Hudson Valley asserts that mutually exclusive filings could be cut-off and that the interim policy did not preclude the application of § 22.23(g)(2). Since there were no pending applications at the time of Hudson Valley's amendment, it argues that Carmody's application was filed after the 60 day cut-off period, and, therefore, was untimely..

6. Hudson Valley also argues that the Bureau's denial of its request for treatment under § 22.23(g)(2) was made without notice in violation of Section 552(a)(1)(B) of the Administrative Procedure Act (APA)[10] and that applying the cut-off rule and not the § 22.23(g)(2) exception was an arbitrary and capricious exercise of authority. Hudson Valley also contends that the Bureau improperly relied on the *Lowband Order*.[11] Hudson Valley argues that the *Lowband Order* involved paging frequencies that had not been allocated prior to the Lowband proceeding, whereas the guardband frequencies, such as the 152.84 MHz frequency which is the subject of this proceeding, had been available to wireline applicants, and, after the adoption of the *NPRM* were also available to nonwireline applicants which requested a waiver.

7. Carmody's opposition to the Application for Review states that there is precedent for the Bureau's denial of § 22.23(g)(2) treatment of Hudson Valley's application. Carmody notes that the Common Carrier Bureau's Mobile Services Division (MSD) returned an amended application filed by Treasurer Communications, Inc. (Treasurer) that also requested § 22.23(g)(2) treatment so that its application would not be treated as newly filed.[12] Carmody also notes that while the *Fence Proceeding* provided for normal cut-off procedures, the interim policy was designed to ensure that freqencies would be available to the general public when the proceeding ended, and that, therefore, Carmody had a right to file its application.

8. In reply, Hudson Valley argues that reliance cannot be placed on the MSD's unpublished letter to Treasurer denying treatment under § 22.23(g)(2), because §§ 0.416 and 0.445 of the Commission's Rules provide that an unpublished letter has no precedential significance. Further, Hudson Valley notes that at the time of the letter to Treasurer the fence had not been eliminated, while at the time of Hudson Valley's amended application the Commission had adopted the order to eliminate the fence between wireline and non-wireline frequency allocations.[13]

III. DISCUSSION

9. The interim policy stated in the *Part 22 Rewrite* provided that a nonwireline carrier could file an application for a wireline frequency if the applicant requested a waiver and that the normal cut-off rules would apply. 95 FCC 2d at 825. The cut-off rule provides in pertinent part that "an application will be entitled to comparative consideration with one or more conflicting applications . . . if the application is received by the Commission in a condition acceptable for filing . . . sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing . . . ." Section 22.31(b)(2)(i). Section 22.23(g)(2) provides that an application will be considered a newly filed application if it is amended by a major amendment, except when the amendment resolves frequency conflicts with other pending applications but does not create new or increased frequency conflicts.[14] Although the Commission does not normally grant waivers of the cut-off rules, § 22.23(g)(2) was adopted, as part of our normal cut-off procedures, to provide an expeditious means to resolve mutually exclusive applications and to resolve frequency conflicts. The Commission found it to be in the public interest to provide competing applicants with an incentive to resolve frequency conflicts by permitting one applicant to switch to another available frequency and avoid a hearing and the consequent delay in making service available to the public. The Commission intended this approach to strike "a balance between our need for an orderly administrative process and a recognition of compelling equitable, [and] procedural . . . factors" attendant to evaluating mutually exclusive applications.[15] In short, § 22.23(g)(2) was meant to allow an applicant to amend its application to another available frequency while retaining its original filing date.

10. On January 25, 1983, when Hudson Valley's 900 MHz application was filed, there were a number of pending 900 MHz applications for the same area that were to be scheduled to be placed in a lottery.[16] Hudson Valley's amended application requesting the 152.84 MHz wireline frequency would normally have been treated as a major amendment. However, its amendment did resolve frequency conflicts with other pending 900 MHz applications for the same area. Section 22.23(g)(2) was intended to recognize these kinds of engineering settlements that expedite processing by removing conflicts that would otherwise require resolution. Further, this exception provides the Commission with the administrative flexibility needed to process applications in the most orderly manner consistent with the public interest.

11. The Bureau's decision to deny § 22.23(g)(2) treatment in this case was inconsistent with the *Part 22 Rewrite's* interim policy statement that the normal cut-off rules would apply. Moreover, in previous cases where the Commission suspended § 22.23(g)(2) treatment for applications amended to change to other newly allocated frequencies, notice of such suspension was given. For example, with reference to the 900 MHz applications, the Commission stated in its decision that "because these 900 MHz frequencies are newly allocated and the potential entrants have not had the opportunity to previously file applications for these frequencies, we are not going to initially allow applications to be amended pursuant to [§22.23 (g)(2)] of the rules." 89 FCC 2d 1337, 1364 (1982).[17] Likewise, when the lowband frequencies were newly allocated, the Bureau issued the *Lowband Order* which temporarily suspended the provision of § 22.23(g)(2). In this case no notice was given that § 22.23(g)(2) treatment would be temporarily suspended. In light of these circumstances, we conclude that the MSD wrongfully denied Hudson Valley § 22.23(g)(2) treatment.[18] Carmody's application was filed on November 26, 1984, after the cut-off date established by Public Notice No. 158 (February 9, 1983) which listed Hudson Valley's January 25, 1983 application, and was, therefore, untimely filed and not entitled to comparative consideration with Hudson Valley's application.[19]

IV. CONCLUSION

12. In view of the foregoing, we conclude that Hudson Valley's amended application should have been given § 22.23(g)(2) treatment, and accepted as filed on January 25, 1983. Therefore, since the 60 day cut-off period had

expired, Carmody's application was untimely filed, and should be dismissed.

V. ORDERING PARAGRAPH

13. Accordingly, IT IS ORDERED, That the Application for Review filed by Hudson Valley Mobile Telephone, Inc. IS GRANTED to the extent indicated herein.

14. IT IS FURTHER ORDERED, That Hudson Valley Mobile Telephone, Inc.'s amended application File No. 21642-CD-P-1-83 IS GRANTED.

15. IT IS FURTHER ORDERED, That Leo V. Carmody's application File No. 20906-CD-P/L-1-85 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 22.23(g)(2) of the rules (formerly § 22.31(e)(2)) provides that applications will be considered newly filed if an amendment is filed to change frequency, unless the amendment resolves frequency conflicts with other pending applications without creating new or increased frequency conflicts.

[2] 47 Fed. Reg. 43842 (1982).

[3] The separate allocation is commonly referred to as a "fence" between wireline and nonwireline frequencies.

[4] *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, CC Docket 80-57, 95 FCC 2d 769 (1983) (*Part 22 Rewrite*).

[5] *Id.* at. 824-825.

[6] *Elimination of the Separate Frequency Allocation Structure in the Public Land Mobile Service*, CC Docket 83-1146, 95 FCC 2d 834 (1983) (*Fence Proceeding*).

[7] Hudson Valley's application was listed as accepted for filing on Public Notice No. 158 (February 9, 1983). Applicants for the 900 MHz paging frequencies do not apply for a specific frequency. Instead, the Commission assigns a frequency to the applicant based on fixed mileage separation criteria.

[8] Thus, treatment under § 22.23(g)(2) of the rules would have allowed Hudson Valley to keep its original filing date of January 25, 1983.

[9] Leo V. Carmody's application is still pending before the Commission.

[10] Section 552(a)(1)(B) of the Administrative Procedure Act states that (a) Each agency shall make available to the public information as follows:

> (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public . . .
>
> (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available . . .

[11] *Temporary Suspension of Cut - Off Rules for 35 and 45 MHz Frequencies*, Mimeo No. 3289, 51 Rad. Reg. 2d (P&F) 347 (1982) (*Lowband Order*). In *Report and Order*, 49 Rad. Reg. 2d (P&F) 1541 (1981), the Commission made available 35 and 43 MHz frequencies for common carrier paging services. The *Lowband Order* temporarily suspended § 22.23(g)(2) treatment for applications amended for the newly allocated 35 and 43 MHz frequencies pending resolution of the petitions for reconsideration filed in the *Report and Order*. The Bureau stated that "it would be conducive to the orderly disposition of the Commission's business to delay accepting [§ 22.23(g)(2)] amendments to eliminate existing frequency conflicts until all potential channels, which might resolve these frequency conflicts, are *allocated and available for assignment* (emphasis added)." 51 Rad. Reg. 2d at 348.

[12] In that case the MSD denied Treasurer's request for § 22.23(g)(2) exemption during the pendency of the *Fence Proceeding*. Letter from MSD to Treasurer (January 25, 1984).

[13] The fence was eliminated in *Report and Order*, CC Docket Nos. 83-1146 and 80-57, 99 F.C.C. 2d 311 (1984). Although the Report and Order was released December 11, 1984, the effective date for the elimination of the fence was not until January 17, 1985.

[14] Frequency conflicts can be resolved by amending an application to change frequency, location, and/or effective radiated power. Hudson Valley amended its 900 MHz application by changing the frequency and moving the location 16.74 miles with a partial overlap in service areas between the original location and the amended location. These changes resolved frequency conflicts with pending 900 MHz applications without creating new conflicts. A change in frequency alone would have created a new conflict with existing 152.84 MHz licensees in the same location. The change in location was enough so that Hudson Valley's F(50,10) contour did not intersect with the 43 dbu contour of existing licensees on the 152.84 MHz frequency in the same location. Affording § 22.23(g)(2) treatment in the circumstances of this case is consistent with past staff actions since the change in location is within the same area as the originally proposed site.

[15] *Report and Order*, Docket No. 19905, 60 FCC 2d 549, 560 (1976).

[16] The 900 MHz lottery for the New York area was held June 28, 1985.

[17] The intent of this passage is to suspend § 22.23(g)(2) treatment of amendments which propose to operate on a 900 MHz frequency. Hudson Valley's amendment proposed to switch from 900 MHz to 152.84 MHz. Therefore, this suspension does not apply to Hudson Valley's amendment.

[18] Section 0.445(e) states in pertinent part that "[no] person is expected to comply with any requirement or policy of the Commission unless he has actual notice of that requirement or policy or a document stating it has been published as provided in this paragraph . . . ."

[19] While Treasurer appears to have been similarly erroneously denied §22.23(g)(2) treatment by the MSD, we note that it did not timely file a petition for reconsideration or application for review of the MSD denial of its request, and, therefore, that decision is final with respect to the facts in that case. As a prospective matter, however, we expressly overrule the Treasury letter decision to the extent it is inconsistent with this Order.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-109

In the Matter of

Amendment of Section 73.606(b), RM-6642
Table of Allotments,
TV Broadcast Stations.
(Sun Valley, Idaho)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 16, 1990; Released: March 2, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of Sun Valley Television (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 4042 (1989), proposing the allotment of VHF Television Channel 5 to Sun Valley, Idaho, as a first local commercial service. Petitioner and Sun Valley Broadcasting Company ("SVBC") filed comments stating an intention to apply for the channel, if allotted.

2. As stated in the *Notice*, Channel 5 can be allotted to Sun Valley in compliance with Section 73.610 of the Commission's Rules.[1] We believe the public interest would be served by allotting Channel 5 to Sun Valley, Idaho, since it could provide that community with its first local commercial service.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 16, 1990,** the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Sun Valley, Idaho	5-

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are North Latitude 43-41-48 and West Longitude 114-21-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-301

In the Matter of

Amendment of Section 73.202(b),	RM-6672
Table of Allotments,	RM-6736
FM Broadcast Stations.	
(Carthage and Webb City, Missouri)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1990; Released: March 2, 1990

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 5367 (1989), issued in response to two separate petitions for rule making. The first petition was filed by Carthage Broadcasting Company (Carthage Broadcasting), requesting the substitution of FM Channel 236C2 for Channel 285A at Carthage, Missouri, and modification of its license for Station KRGK(FM) to specify operation on Channel 236C2.[1] The Second Petition was filed by Don and Gail Stubblefield (Stubblefield), requesting the substitution of FM Channel 236C2 for Channel 236A at Webb City, Missouri, and modification of the license for Station KKLL(FM). Richardson Anderson (Anderson), Aurora Broadcasting, Inc. (Aurora) and Carthage Broadcasting filed supporting comments. Stubblefield withdrew its petition for rule making on September 7, 1989. Carthage Broadcasting filed reply comments. Anderson withdrew his expression of interest for a channel at Carthage on September 22, 1989.

2. The *Notice* proposed the alternate allotments of Channel 236C2 to Carthage or Webb City, Missouri. The allotment of Channel 236C2 at Carthage requires the substitution of Channel 250A for Channel 236A at Webb City. An *Order to Show Cause* was issued to the licensee of Station KKLL(FM), Webb City, to show cause why its license should not be modified to Channel 250A. Carthage Broadcasting indicated its intention to reimburse Station KKLL(FM) for all reasonable expenses in changing channels. The *Notice* also indicated that should another interest in the Carthage proposal be expressed, the modification could not be made available to satisfy those interests.

3. In view of the fact that Don and Gail Stubblefield have withdrawn their petition for rule making requesting allotment of Channel 236C2 at Webb City and modification of the license for Station KKLL(FM) to specify Channel 250A, no further analysis or comparative study is necessary. The Stubblefields have consented to the substitution of Channel 250A for Channel 236A at Webb City and modification of the license for Station KKLL(FM) to specify Channel 250A. Nor is there a need to allot a second Class C2 Channel to Carthage, since Richard Anderson has withdrawn his comments indicating he would apply for Channel 236C2 at Carthage.

4. We believe the public interest would be served by the substitution of FM Channel 236C2 for Channel 250A at Carthage, Missouri. Channel 236C2 can be allotted to Carthage at the petitioner's specified site provided Channel 236A is deleted at Webb City, Missouri.[2] Channel 250A can be substituted for Channel 236A at Webb City, Missouri, in compliance with minimum distance separation requirements of Section 73.207 of the Commission's Rules at the current site of Station KKLL(FM).[3] We have authorized modification of the license for Station KRGK(FM) to specify operation on Channel 236C2 in accordance with Section 1.420(g) of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 16, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Carthage, Missouri	236C2
Webb City, Missouri	230C2, 250A

6. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KRGK(FM), Carthage, Missouri, IS MODIFIED TO SPECIFY operation on Channel 285A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Don and Gail Stubblefield for Station KKLL(FM), Webb City, Missouri, IS MODIFIED, effective **April 16, 1990,** to specify operation on Channel 250A in lieu of Channel 236A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KKLL(FM)'s license [BLH-880909KC] except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests maybe conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-880909KC except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That petition for rule making filed by Don and Gail Stubblefield to substitute Channel 236C2 for Channel 236A at Webb City, Missouri, IS DISMISSED (RM-6736).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The license for Station KRGK(FM) was modified to specify operation on Channel 250A in lieu of Channel 285A, effective March 3, 1989, in MM Docket 87-474. *See* 4 FCC Rcd 674 (1989). In response to the petition for reconsideration filed in that docket, the Commission has separately adopted a *Memorandum Opinion and Order* terminating the proceeding.

[2] The coordinates for Channel 236C2 at Carthage are 37-17-54 and 94-21-49.

[3] The coordinates for Channel 250A at Webb City are 37-06-11 and 94-24-11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-70

In the Matter of

Amendment of Section 73.202(b),	RM-6610
Table of Allotments,	RM-6786
FM Broadcast Stations.	
(Seneca and Streator, Illinois)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 16, 1990; Released: March 2, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of Caroline Daugherity (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 2519 (1989), proposing the allotment of Channel 291A to Streator, Illinois, as that community's second local service.[2] Petitioner filed comments reaffirming her intentions to apply for the channel, if allotted. Gene McCoy ("McCoy") filed comments and counterproposal requesting the allotment of Channel 291A to Seneca, Illinois, as that community's first local service. [3] Petitioner filed reply comments.

2. McCoy, in his counterproposal, states his intention to apply for the channel, if allotted to Seneca. Petitioner, in her reply comments, suggests an alternate channel for consideration at Seneca to permit allotments at both communities.

3. Based on the information before us, and in view of the availability of an alternate Class A channel for use at Seneca, a comparative analysis is unnecessary. In particular, Channel 239A can be allotted to Seneca, Illinois, in compliance with the Commission's minimum distance separation requirement with a site restriction 7.6 kilometers (4.7 miles) south.[4] As proposed, Channel 291A can be allotted to Streator, Illinois, in compliance with the Commission's minimum distance separation requirements.[5] Because the petitions which resulted in these allotments were filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR § 73.213(c).

4. We believe the public interest would be served by the allotment of Channel 239A to Seneca as that community's first local FM service. In addition, we believe it is in the public interest to allot Channel 291A to Streator as that community's second local FM service.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules. IT IS ORDERED, That effective **April 16, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Seneca, Illinois	239A
Streator, Illinois	249A, 291A

6. The window period for filing applications will open on **April 17, 1990,** and close on **May 17, 1990.**

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Seneca, Illinois, has been added to the caption.

[2] The *Notice* incorrectly stated first local service, but in fact Channel 291A will provide the community with its second local service.

[3] Public Notice of the counterproposal was given on June 22, 1989, Report No. 1784, RM-6786.

[4] The coordinates are North Latitude 41-14-47 and West Longitude 88-35-19.

[5] The coordinates are North Latitude 41-07-30 and West Longitude 88-49-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-355

In re Applications of

TRI-STATE BROADCASTING, CO. INC.
Station KUKQ(AM)
Tempe, Arizona

File No. BR-830609UH

For Renewal of License

Jack F. Grimm,
Jackie B. Grimm &
Ruth G. Clifford d/b/a
GRIMM & CLIFFORD

File No.BP-830831AB

For Construction Permit for
New AM facility at Tempe, Arizona

TRI-STATE BROADCASTING, CO., INC.
Station KPUD-FM
Tempe, Arizona

File No. BRH-830609WZ

For Renewal of License

Jack F. Grimm,
Jackie B. Grimm &
Ruth G. Clifford d/b/a
GRIMM & CLIFFORD

File No. BPH-830831AI

For Construction Permit for
New FM facility at Tempe, Arizona

Appearances

Joel H. Levy, Lawrence N. Cohn, and *J. Brian DeBoice* on behalf of Tri-State Broadcasting Company; *Kathryn R. Schmeltzer* on behalf of Grimm & Clifford; *Y. Paulette Laden* on behalf of Chief, Mass Media Bureau.

DECISION

Adopted: January 23, 1990; Released: March 6, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN. Chairman MARINO issuing a separate statement dubitante.

Board Member ESBENSEN:

1. This proceeding involves the pending applications for renewal of license of stations KUKQ(AM) and KUPD-FM, Tempe, Arizona, licensed to Tri-State Broadcasting Co., Inc. (Tri-State), and the competing applications for those facilities filed by Jack F. Grimm, Jackie B. Grimm, and Ruth G. Clifford d/b/a Grimm and Clifford (G&C).

2. Before the Board are the exceptions and replies of the parties, and a plethora of related pleadings. [1] Oral argument was heard on October 27, 1989. Based upon our review of all the documents and the hearing record below, and the *Initial Decision*, 3 FCC Rcd 4874 (1988)(I.D.), of Administrative Law Judge Edward J. Kuhlmann (ALJ), we (1) affirm (in part) the I.D.'s disqualification of Tri-State, and (2) grant the mutually exclusive applications for construction permits filed by G&C on August 31, 1983.

I. BACKGROUND

3. The captioned applications were designated for hearing on November 26, 1985, some two years subsequent to the filing dates. *See Hearing Designation Order*, 50 Fed Reg. 49610 (1985)(HDO). There, the renewal applications of Tri-State and the competing applications of G&C were designated only upon the "standard comparative" issue. However, on January 2, 1986, G&C filed a Petition to Enlarge Issues with the ALJ seeking a multitude of issues against Tri-State. One of the key issues there sought (and subsequently added as Issue 1) arose from the acquisition of Tri-State in 1974, and associated representations made to the Commission in support of that acquisition.

4. On January 15, 1974, Tri-State filed applications seeking the assignment of the licenses from the then-Receiver in bankruptcy, Ben P. Marshall. Those applications proposed John N. Norris, III and Robert L. Melton, as the new officers, directors, and 50% (each) shareholders of Tri-State. Norris and Melton have been friends and business associates for some 30 years. Beginning in the mid-1960's, Melton and Norris maintained a joint savings account from which they financed various investments and business ventures. Tr. 132-33, 135, 405. They eventually decided to purchase a broadcast station and, in 1970, made a later-rejected offer to purchase the broadcast licensee company that then employed Melton. Tr. 136, 1409-10. However, in late 1970, Melton learned about a management position at KUPD-AM (now KUKQ(AM)) and KUPD-FM. At that time, the stations were owned by Jack Grimm and William Clifford (now deceased) through Tri-State Broadcasting Corporation. Tri-State Exh. 9. In January 1971, Melton entered into an agreement and became General Manager of Tri-State's stations. As part of his compensation, he was to receive 10% of Tri-State's stock. Tri-State Exh. 9, Att. 2-A.

5. At about the same time, Norris obtained an option to purchase the stations and the associated real property from Tri-State's then-shareholders, Grimm and Clifford. Tri-State Exh. 9. However, by the fall of 1971, Melton had brought suit against Tri-State (apparently centering on his 10% ownership interest, Tr. 4603). Norris intervened in this suit to protect his option to acquire the stations. Tri-State Exh. 9 at 3. On July 17, 1973, a stipulation was entered in Melton's civil suit against Tri-State, Jack Grimm, and William Clifford, which provided that Grimm and Clifford would transfer their 9,000 shares of Tri-State stock to Norris, subject to existing pledges to two banks, and payment of $327,500 to Grimm and Clifford.

Tri-State Exh. 9, Att. 1-A, at 57-65. Norris would guarantee the Tri-State note to Grimm and Clifford, and Tri-State would pay them $2500 per month, without interest, until the debt was paid. Melton, upon consummation of the stipulation, would relinquish his right to own 10% of Tri-State's stock. *Id.*, at 59.

6. A local court retained jurisdiction pending FCC approval of the proposed transaction; and, on January 3, 1974, Norris' local counsel requested (and received) permission of the court to transfer one-half of Norris' stock to Melton. The court also issued an order which permitted Norris and Melton to submit an application to the Commission to request that the licenses be assigned to them. Tri-State Exh. 9; Tr. 193. At about the same time, Norris also discussed with local counsel the appointment of a Receiver for Tri-State. Tr. 1425-26. Local counsel eventually recommended that his former assistant in the Phoenix City Attorney's office, Ben P. Marshall, become the Receiver. Tr. 4154, 4163. At that time, Marshall was employed by the City Attorney. Tr. 179, 4163.

7. During the pendency of these assignment applications, questions were raised by the Commission concerning the stewardship of Melton during the time he served as General Manager for Grimm and Clifford, and representations he had made to the Commission during that time. Numerous Commission field investigations of the stations had been conducted, and, apparently based on the results thereof, the Commission's staff indicated to Melton and Norris that it would not approve any assignment application in which Melton was proposed as an officer, director, or shareholder.

8. A brief review of the multiple technical inspections of the stations by the Commission is appropriate. Kent Crawford, who at the the time of hearing was Regional Director of the Commission's Field Operations Bureau in Chicago, was, from 1972 to 1974, Special Enforcement Director of the FCC's Los Angeles office. He had conducted field investigations in July 1972, July 1973 and July 1974, at the stations. Crawford, *inter alia*, had stated in his 1972 report that the licensee's logs appeared to have been falsified. *Id.*, at 3. Additionally, this report contained the following information about Melton (who was the General Manager of the stations):

> It was learned during the inspection that the station ownership is currently in receivership. The present station manager, Mr. Bob Melton, has filed an application with the Commission to become the new licensee of KUPD-AM-FM. Mr. Melton was present during the inspection; however, he sat in a front office and played chess during the inspection. Mr. Melton appeared to be "put-out" when he was asked questions concerning the station's operations by Engineer Crawford. Mr. Melton indicated he wanted 50KW for the AM and 100KW for the FM, so "we can get out." His only apparent concern was that he was only number two in the "rock and roll" market and with the increased power he could be number one. He showed very little concern for the stations' technical operation, a feeling that had been passed along to his employees (*i.e.*, not making the required readings, falsifying logs, not know[ing] how to operate the equipment, and complete disregard to the problem with the antenna system) . . . .

G&C Exh. E-63; Tr. 2243. This inspection resulted in the Commission issuing Official Notices of Violation on September 20, 1972. The Notices cited fourteen violations at the AM station and seven at the FM station. G & C Exh. E-66; Tr. 2245. The stations were further inspected on March 5 and 6, 1973 by Ben Nakamiyo of the FCC Los Angeles office. He found improper operating parameters and that operator and metering requirements were not being met. As a result, yet another Notice of Violation was issued. Tr. 2250-2253.

9. The Receiver (Marshall) responded to the Notices on July 25, 1973, and represented that the violations had, or would, "within the next several weeks," be corrected. He also represented that work on improving the facilities had begun, and that the transmitters and other metering equipment had been brought into compliance with the Commission's rules. G&C Exh. E-66, 14-17. On July 28, 1973, Crawford and Nakamiyo conducted a further special inspection, and found that although Marshall had represented that physical changes had been made, none had actually taken place. G & C Exh. E-66, at 1-8; Tr. 2304, 2254-55, 2261. They also found that the logs were still being falsified. G & C Exh. E-66, at 2-5. During the inspection, Crawford claimed that he also detected the odor of marijuana at the transmitter/studio complex, and he encountered open hostility from Melton. Tr. 2267. The stations were given a "very poor" rating. Another Notice of Violation was issued on September 7, 1973 to KUPD-FM. G&C Exh. E-67; Tr. 2258. In response, Marshall again submitted a letter to the Commission on October 25, 1973, and claimed that all the violations had been corrected. G&C Exh. E-67, at 6. Nevertheless, the Commission's staff believed that additional inspections should be conducted. Thus, on July 2, 3, and 4, 1974, two attorneys from the Commission's Complaints and Compliance Branch in Washington travelled to the Phoenix area; at their request, the field engineers from the Los Angeles office were asked to accompany them and conduct further technical inspections of the stations. Tr. 2260; G & C Exh. E-68. During these inspections, violations were still apparent; Melton was interviewed and was "uncooperative." Tr. 2264-65.

10. On September 27, 1974, another Notice of Violation was issued to the stations. G&C Exh. E-68; Tr. 2267-68. In response, on October 15, 1974, Marshall made the following representations to the Commission:

> The citations set forth in the September 27 Notice of Violation arise primarily under the Commission's Rules governing operating procedures and logging requirements. Prior to my appointment as Receiver by the state court, I had had no experience or involvement in any way in the operation of a radio station. It has therefore been necessary for me to rely upon the stations' staff to see to it that the Commission's Rules governing operating procedures and logging are being complied with. As a result of the continuing violations of operating and logging rules, as well as other matters which have come to my attention, I have made changes in the operating procedures of the stations. *This includes the demotion of the stations' former General Manager who has been relieved of all managerial and administrative responsibilities ; a new General Manager who is himself an attorney has been named.*

G&C Exh. E-69, at 2-3 (emphasis added).

11. In the meantime, the Commission also expressed concern with representations made by Tri-State in its applications for renewal of license filed in June 1974. On August 15, 1974, the Acting Chief of the Commission's Renewal and Transfer Branch wrote Marshall, requesting him to reconcile the variances in the minimum amount of news and public affairs programming that had been proposed for the license period and that which had actually been carried during the composite week of the license period. Tri-State Exh. 9, Att. I-D, at 159-60. Marshall was asked to explain, since the station had broadcast promised programs considerably below the amounts previously proposed, how the licensee was going to meet its promises during the following license period. In addition, Marshall was asked to provide a list of public affairs programs currently broadcast by the stations, and a list of those to be maintained during the next license period. [2]

12. In any event, after Melton was told that the Commission's staff had objections to his participating as a 50% owner of Tri-State (as proposed in the pending applications), it was represented that he would withdraw as proposed owner and would resign as General Manager. Melton testified that "someone" suggested that he stay on as a salesperson, and that Barry Leverant (a local attorney) become the General Manager. Tri-State Exh. 12, at 4. Before that decision was made, however, Melton claimed that he had "heated discussions" about his demotion with Norris, Marshall, and counsel to the Receiver, Wes Riggs. Tr. 226, 263-264. Marshall allegedly told Melton that he was being demoted because there had been so many FCC rule violations at the stations, and Melton's recollection was that the Commission "was very frustrated with our whole operation" at that time.

13. Thus, Tri-State formally amended its pending applications, deleting Melton as an officer, director and shareholder, and represented that Melton's future role at the stations would be limited exclusively to sales. Norris was proposed as its 100% shareholder and President/Director. Apparently satisfied with these representations, the Commission granted the pending applications on December 24, 1974.

14. Following closing of the transaction, Tri-State filed an Ownership Report (FCC Form 323), dated February 7, 1975, in which it represented that the officers, directors, and shareholders of Tri-State were Norris (officer, Director, and 100% owner of the issued and outstanding shares), Lloyd D. Melton (Robert L. Melton's brother), Vice-President and Director, and Barry Leverant, Secretary-Treasurer and Director. A similar Ownership Report was filed (dated May 20, 1977) with the renewal applications of the stations, reflecting the identical officers, directors, and shareholders. G&C Petition to Enlarge Issues, Att. B and C.

15. Subsequently, on February 3, 1978, Tri-State filed a letter (executed by Norris) with the Commission which claimed the following (*id.*, Att. D):

> As your records will indicate, the undersigned became the principal stockholder of the current licensee approximately three years ago, pursuant to Commission approval granted on December 24, 1974 (FCC File Nos. BAL- 8071 and BAPLH-164). The Commission records will further indicate that initially Mr. Bob Melton was proposed as a 50% stockholder; however, it became apparent that during the period that Mr. Melton served as general manager of the station under the supervision of the prior licensee, a Court appointed Receiver, a situation existed which raised questions concerning Mr. Melton's qualifications to be a broadcast licensee. Thereafter, Mr. Melton was deleted from the transfer application and I acquired 100% of the stock of the licensee. Moreover, it was represented to the Commission that Mr. Melton's role at the station would be limited to sales, that he would not be the general manager and that he would not have any responsibility in connection with the submission of any documents to the Commission.
>
> During the interim time period, Mr. Melton has served in various sales capacities. He has been, in my judgment, a careful, loyal and conscientious employee. Moreover, his behavior during this time period leads me to believe that he is fully aware of the nature of his prior failures, and that they would not be repeated in the future.
>
> Because of my belief in Mr. Melton's rehabilitation, and personal problems which require my attention, I would like now to utilize Mr. Melton in a supervisory capacity and to permit Mr. Melton to acquire a stock interest in the licensee.

Shortly after submitting this letter, Tri-State filed another Ownership Report (on March 3, 1978), disclosing that Melton had acquired a 49% ownership interest and had become an officer and Director of Tri-State. Here, of course, the salient considerations are principally the events that occurred prior to the time Melton formally acquired his allegedly new ownership interest, and whether they prove that Tri-State misrepresented Robert Melton's role between 1974 and 1978.

16. In that regard, in his *Memorandum Opinion and Order*, FCC 86M-723, released February 27, 1986, adding three of the seven issues requested by G&C, the ALJ recounted subsequent events (*id.*, paras. 3-6; footnote omitted):

> [G&C] states that the stations' [subsequent] ownership report filed on March 3, 1978 reflected that Robert Melton not only acquired an ownership interest but he also became Tri-State's secretary and a director. In addition, [G&C] relates that Tri-State reported, in 1977, to the State of Arizona that Mr. Melton was a director in that year. [G&C] argues that Tri-State did not accurately inform the Commission in January 1978 about what Mr. Melton's role had been or what it actually intended that his role would be in the operation of the Tempe stations.
>
> * * *
>
> [G&C also] points out that Tri-State's file at the Commission contains representations by Tri-State that Mr. Melton would "restrict his activities solely to sales." Moreover, [G&C] submits an affidavit from Jennifer Martinez that casts doubt on all of Tri-State's representations to the Commission about Mr. Melton's participation. Ms. Martinez was con-

troller at the stations from 1979-1980. She said that Mr. Melton and Mr. Norris told her that Mr. Melton had continuously run the stations from the day they were taken over by the receiver. She also claims that Mr. Melton was in charge of the stations while she was employed during 1979-80.

It appears that Tri-State's representations about Robert Melton's role have been incomplete and inaccurate. Questions have been raised about what his role was during the period preceding the January 24, 1978 letter and, in addition, about the accuracy of Tri-States' representations to the Commission about his role after January 24.

17. In consideration of the foregoing, the ALJ added Issue 1, as follows (I.D. at para. 1):

(1) To determine whether Tri-State Broadcasting Co.,Inc., misrepresented and/or lacked candor in its representations to the Commission about the participation of Robert Melton in the operation of KUKQ-AM and KUPD-FM and the ownership of Tri-State Broadcasting. And to determine the effect of those findings on Tri-State Broadcasting's basic qualifications.

In addition to the "standard comparative" issues (and Issue 1), the following basic qualifying issues (2 and 3) were also added by the ALJ (*id*) :

(2) To determine whether John Norris and Marston's, Inc.'s violation of Arizona criminal law represents conduct which should disqualify Tri-State Broadcasting Co., Inc.

(3) To determine whether and to what extent Tri-State Broadcasting Company failed to comply with Sections 73.1202(a), 73.3526(a)(7) and 73.3526(e) [concerning placement and retention of public letters in public files], and to determine, if there have been violations of these rules, whether Tri-State Broadcasting is qualified.

18. In electing to add Issue 2, the ALJ considered the following (I.D. at paras. 7-11):

On April 5, 1982, Marston's, Inc., a company in which Tri-State principal John Norris is vice president, entered a guilty plea to Count I of an indictment to a felony conspiracy charge. A Judgment of Guilt was entered against Marston's, Inc. on April 23, 1982. As a result of Marston's action, John Norris plead no contest to criminal contempt on April 23, 1982. Mr. Norris received six months probation, was fined $336, and directed to complete 75 hours in a Work Order Program or donate school equipment.

The criminal charges against Mr. Norris and Marston's resulted from a grand jury proceeding involving anti-trust actions against Marston's and John Norris. (Two civil anti-trust actions were brought against Marston's and later dismissed.) [G&C] petitions to enlarge the issues to determine whether the criminal conduct of Marston's and John Norris should disqualify Tri-State. In addition, [G&C] requests designation of an issue to disqualify Tri-State because it did not fully report the resolution of these civil and criminal anti-trust proceedings.

Tri-State does not dispute John Norris' criminal contempt plea but it argues that Marston's plea of guilt does not involve John Norris. It urges that Marston's pled guilty only to failing to record a note on its books and that only one company official, Robert T. Bonnes, was responsible for that action. [G&C] disputes Tri-State's reading of the guilty plea. It urges that the admission of guilt by Marston's included a finding that John Norris and his brother, Edward, buried documents sought by subpoena by the grand jury, that John Norris committed perjury before the grand jury, and that he removed documents subpoened by the grand jury to Temple, Texas.

19. Finally, the ALJ considered allegations that Tri-State had failed to place all public comments and suggestions in the station's public file, and/or properly retain such letters. In resolving to add Issue 3, the ALJ observed (*id*., at paras. 15-19):

[G&C] also argues that Tri-State has not placed all public comments and suggestions in its public file. The public file contains only four letters received from 1980 to 1984. But [G&C] points out that a local newspaper account in the *Arizona Republic* reflects that numerous letters from the public have been received by the stations. [G&C] establishes that at least one letter, that from Lauro Gracia, Jr., is not included in the stations' file . . . .

Public files, as [G&C] argues, are, in the Commission's view, an important means for the public to weigh a licensee's record. There can be no excuse for not placing Mr. Garcia's letter, or a copy of it, in the public file. Moreover, when it is remembered that Mr. Garcia wrote to the Commission, there is every reason to believe that Tri-State was aware that the letter would be significant in the public's assessment of its record . . . . An issue will be designated in which Tri-State will be expected to justify its practice of not including all public correspondence relating to public comments and suggestions in the public file, and it will be expected to specifically explain its failure to put Mr. Garcia's letter in the file.

Some fifteen days of hearing sessions ensued on the foregoing issues.

II. ISSUE 1 : REPRESENTATIONS CONCERNING MELTON'S POSITION AND ACTIVITIES AT STATIONS

20. This issue, which is central to the determination of the outcome of this proceeding, concerns whether Tri-State failed to accurately represent to the Commission who owned, controlled, and directed the operations of Stations KUPD and KUKQ(FM), Tempe, Arizona. Here, each facet of the salient direct and circumstantial evidence adduced at hearing will be examined in turn, including: (1) a 1974 lease agreement in which Melton was a lessor of technical equipment utilized in the operation of the station(s); (2) representations made by Melton on his

federal income tax returns; (3) representations made by Tri-State concerning Melton in its Annual Reports to The Arizona Corporation Commission; (4) the testimony of six former employees of the stations called by G&C concerning Melton's activities; (5) the testimony of eight witnesses called by Tri-State; (6) Melton's activities and duties with respect to advertising accounts he allegedly serviced as a salesman; (7) reciprocal trade advertising accounts involving Melton, and those he utilized for his own personal benefit; (8) the terms and conditions pursuant to which Melton acquired his 1978 ownership interest in Tri-State; and (9) the activities, duties, and responsibilities of Barry Leverant in his alleged role of General Manager of the stations.

21. *Equipment Lease Agreement* : On September 16, 1974, the day that Melton allegedly was demoted and Leverant appointed as "General Manager, Leverant executed on behalf of Tri-State a "Lease of Personal Property" with Norris and Melton. G&C Exh. B-15; Tr. 268, 271. There, Norris and Melton leased to Tri-State certain items of broadcast equipment, including an FM transmitter, studio generator, FM antenna, Heliax coaxial cable, remote control console, amplifiers, coders, and a 5 kw transmitter and tuning unit. G&C Exh. B-15; Tr. 272. Melton testified that the equipment on Schedule A of this agreement was included in the lease. Tr. 272-73. Norris agreed that the items on Schedule A were included in the lease, but maintained that despite the listing of the AM equipment on Schedule A, the lease did not include AM equipment. Tr. 1461-62. The lease began on November 12, 1974, and Tri-State agreed to pay Norris and Melton $1,000 per month for 30 months. G&C Exh. B-15, at 1.

22. Both G&C and the Commission's Mass Media Bureau (Bureau) argue that the lease agreement of (at least) the broadcast equipment for KUKQ(FM) is probative evidence of Melton's continued control and ownership of the stations. Tri-State does not dispute that Melton was 50% owner of the station's broadcast equipment, but submits that there were "unrelated" reasons for this arrangement.

23. *Federal Income Tax Returns* : It is uncontroverted that Melton executed and filed with the Internal Revenue Service multiple tax returns (for the years 1975, 1976, and 1977) that listed his occupation and title as "Vice-President-General Manager." G&C Exh. E-5 at 1,4; G&C Exh. E-7 at 1,4; G&C Exh. E-15 at 1.8. However, neither Tri-State nor Melton could explain how Melton's accountant (who allegedly prepared the returns) could have acquired such a fundamental "misimpression" over several tax years. Tr. 4652. Indeed, Tri-State's counsel could merely speculate that this reporting disclosure happened because Melton had been an officer at a different station in the 1960's ("at least he believed he was"), and, thus, confusion resulted. *Id*.

24. *Annual Reports to Arizona Corporation Commission* : As an Arizona corporation, Tri-State was required to file annual reports listing, *inter alia*, the names and addresses of its officers and directors. Tri-State's annual report filed for the year ending December 31, 1977 listed Melton as a Director of Tri-State. Two subsequent reports, for the years ending December 31, 1983 and December 31, 1984, reflected that Melton was elected a Director on January 1, 1977. G&C Exh. B-30, at 1-2, 16-25. In its Exceptions, Tri-State concedes that these multiple reports were filed, but describes them as "inaccurate" and claims that it would not "be motivated to dissemble in such a bumbling and obvious fashion . . . ." Tri-State Exceptions at n. 15.

25. *G & C Witness Testimony* : G&C presented the testimony of six witnesses, each of whom had worked at the Tri-State stations. Marlana Jarvis Mertz began working at the stations as a receptionist in September 1976. She later became a "sales secretary" with the title "administrative assistant," and she remained in that position until mid-1978. She was originally hired by Norma Hein (whose relationship to the stations and Robert Melton is more fully discussed, *infra*, at paras. 41-43), who become her immediate supervisor. G&C Exh. B-3; Tr. 2573. She typed sales contracts and correspondence for the sales staff, *id*., and remembers receiving calls from advertisers for various salespersons; however, she testified that she never received any such sales calls for Robert Melton. Tr. 2605.

26. Mertz did not know that Robert Melton was supposed to have been a salesman, and she did not remember ever seeing any sales documents containing Melton's name in the period before February 1, 1978. While she typed "Operation, Time and Date" forms (copies of which were sent to traffic, accounting, the salesperson, any agency involved, and the station's file) from salespersons' handwritten drafts, she never discussed any such forms with Robert Melton. Melton never received such a form from her, and she never supplied any to him (although she routinely gave salespersons copies of their forms.) Tr. 2588-91, 2606-07, 2608. She also typed "continuity" (commercial copy) for commercials from rough copy that the sales staff supplied. Robert Melton never supplied any such copy to her, and she never discussed such documents with him. Tr. 2608-09; G&C Exh. B-3. Mertz also stated that Lloyd Melton (Robert Melton's brother and Station and Sales Manager) usually held early morning sales staff meetings at a nearby restaurant, but she never saw Robert Melton attend one. *Id*., at 2-3.

27. Mertz further testified that she understood when hired in 1976 that Robert Melton was the "owner and president" of the stations. She testified that it was "general knowledge" among all station employees that Robert Melton was "the boss." Tr. 2603. She never knew of anyone supervising Robert Melton, and she observed that he treated others as an employer would. G&C Exh. B-3, at 2; Tr. 2602-03. She often saw him sitting at what was known as Leverant's desk, even when Leverant was there. She added that, when Leverant was present and Melton was sitting at his desk, Leverant would walk around or leave early. Tr. 2575-77. Mertz also remembered that Leverant, from the time she began work at the stations, continued to conduct his private law practice; he would spend 4 hours a day at the station, and the rest of the day at his law office. Tr. 2610-2611. Mertz was introduced to Norris, but she understood he was a "passive owner" of Tri-State. Tr. 2583-2604. Norris, she testified, would come to the station to meet with Melton, but did not help run the stations. Tr. 2604.

28. G&C witness Vicky Thompson Graham was a "secretary-receptionist" at Tri-State's business offices in Phoenix for three or four months during the summer of 1976. She applied in April 1976, was interviewed by Hein, and was hired in May 1976. When she was originally interviewed, Hein introduced Robert Melton to her as the "owner and manager" of the stations. G&C Exh. B-4; Tr. 2621, 2626, 2641. Graham testified that station employees talked about Melton as the "owner and manager." Tr. 2625. Graham also typed bills for the salespersons and answered the telephone; however, she testified that while

advertising clients called for other salespersons, none ever called for Melton. G&C Exh. B-4; Tr. 2645. Graham also testified that she seldom saw Leverant at the stations' business offices, and when she did see him, it was only for an hour or two, two or three times a week. However, she knew that he did legal work and could be reached at another office. Graham said that when Leverant did appear, he spoke only with Melton and Hein. G&C Exh. B-4; Tr. 2630-31.

29. G&C witness Jean Poyner Malatak worked at the stations from the spring 1975 to June 1977 as a "receptionist" and "sales secretary," in two different Tri-State business offices. At the outset of her employment, she was introduced to Leverant, Robert Melton, and Norris. During the early part of her employment, she did not remember Robert Melton having a management title, but she was led to believe that he was an "owner" of the stations. G&C Exh. B-7; Tr. 2652, 2654, 2671. She never knew that he was supposed to be a salesperson. G&C Exh. B-7.

30. Malatak also recalled that Leverant only came to the office 3 or 4 hours per day. She testified that, at the beginning of her employment, Leverant worked for the City of Phoenix. Later, when he no longer worked for the city, he spent that time at his private law office when away from the station. G&C Exh. B-7; Tr. 2658. Also, in her job as receptionist, Malatak was told to assign telephone calls from new advertisers to the salespersons on a rotating basis, but no one ever told her to assign calls to Robert Melton. She also checked the station logs, typed sales orders for the salespersons, provided copies of the orders to the bookkeeper and the traffic manager, and retained a copy for billing. During the entire time she performed these duties, she never saw Robert Melton's name on a sales order. She never knew of any sales accounts or sales agencies assigned to Robert Melton, and she never did any typing for him. *Id.*

31. Malatak testified that she and the other employees were aware that Robert Melton was not supposed to have any say about the operation of the stations because of his problems with the Commission. Tr. 2687. In fact, when she worked at the station's business office in the Ramada Sahara Hotel, she would join Lloyd Melton, Robert Melton, Norma Hein (and some of the salespersons) when they discussed FCC problems and the problems with drugs. Tr. 2677-8. From those discussions, she (erroneously) deduced that Robert Melton could "own the stations," but that he could not manage them. Tr. 2680. She never heard anyone discuss a subterfuge regarding Robert Melton's role at the stations, but she maintained that the fact that one existed was "understood" by the Tri-State employees. Tr. 2682.

32. Malatak further testified that, on occasion, Hein would assemble the employees and reprimand them for being late or indolent; Hein advised them that Robert Melton did not "like that kind of stuff" from employees. Tr. 2662, 2664; G&C Exh. B-7, at 1. Malatak related that Hein, after commercial availabilities on the stations had been sold out one Christmas, found the staff playing backgammon. She said that Hein chastened them that "Bob did not like that." Tr. 2689. Malatak stated that she never saw Robert Melton attend any of the stations' regular morning sales meetings. Tr. 2669-70, 2695-96. Malatak also said that, according to Hein, Norris believed that he and Robert Melton "should keep a low profile." Tr. 2684-85.

33. G&C witness Barbara Louise Fabre was Tri-State's traffic director (in charge of scheduling commercials and maintaining program logs) from July 1976 until early 1979. Tr. 2547. In her job, Fabre was given handwritten sales contracts or orders, which indicated the name of the salesperson. From the sales orders, she scheduled the commercials and prepared the logs to send to the studio for broadcast. When questions arose, as they often did, she spoke with Lloyd Melton or one of the salespersons; however, she did not remember ever talking with Robert Melton about a sales contract. G&C Exh. B-2; Tr. 2549-50. A confirmation of the handwritten order was later sent to her on an "Operation, Time and Date" sheet. The form, which contained the salesperson's initials, was compared with the handwritten order. Tr. 2342, 2349-52, 2353, 2355. The "continuity" (advertising copy) was also given to the traffic manager, and it too identified the salesperson who handled the account. In addition, the continuity had a "cart number" (for the prerecorded commercial contained on a tape cartridge), which Fabre assigned for logging and "start" and "end" dates. Tr. 2520. In the course of these activities, Fabre never saw any sales contracts with Robert Melton's name, and she knew of no accounts for which he was responsible. She never received tapes or copy from him; she never received inquiries about the status or scheduling of commercials from him, and no one else ever brought her contracts or copy for Robert Melton. Tr. 2530. Fabre frequently spoke with all salespersons about copy; but she never spoke with Robert Melton about any such sales material. Tr. 2528-29.

34. Fabre observed the early morning sales meetings and heard the sales discussions; but she never saw Robert Melton participate in those meetings or discussions. Tr. 2530-32. While Fabre had been informed that Leverant was the stations' General Manager, she observed that he did not seem to have much influence. Tr. 2358. Her understanding was that Robert Melton was in charge, and assumed he was a "boss" (Tr. 2364). She also said that Melton had no schedule, had no supervisor, appeared in the office sporadically, and never performed any sales functions. G&C Exh. B-2, at 2; Tr. 2526, 2531-33. Moreover, according to Fabre, station personnel (including Leverant) deferred to him. Tr. 2540.

35. G&C witness Burt Goodman worked as News Director at the stations from July 1975 through November 1975. He was hired by Todd Wallace, who Goodman thought was a KUPD "consultant." G&C Exh. B-5, at 1. Goodman reported to Leverant, but believed that Robert and Lloyd Melton (and Norris) owned the stations. On at least one occasion, Robert Melton instructed Goodman to develop a public affairs program involving Tempe community leaders. G&C Exh. B-5, at 3; Tr. 3669-72. On another occasion, when a van was selected for a station promotion, Leverant told Goodman that he would have to get Robert Melton's approval. G&C Exh. B-5; at Tr. 3665.

36. After a dispute with Robert Melton about meals that Melton claimed Goodman had not been authorized to charge, Goodman left the station. When Melton called him about the charges, Goodman maintained that Leverant had approved the meals. Melton then informed him that Leverant had "no right to authorize such charges, and that food "trades" (reciprocal trade advertising resulting in food bartered for commercials) were to be used only by the salespeople. Melton ordered him to "stop charging food and beverages to the station immediately," and told him that he would have to pay the bill.

G&C Exh. B-5 at 2; Tr. 3860-82. Goodman replied that, if that was the case, he was quitting, and he went home. Tr. 3683-84. Later, Leverant called Goodman and asked him whether he would return to work and wished Melton to apologize. Goodman said he did not want Melton to apologize; however, Melton called Goodman and said that there had been a "misunderstanding" by Leverant about the restaurant "trades." Goodman then returned to work at the station. G&C Exh. B-5 at 2-3.

37. The final G&C witness was Phil Esch, who was hired by Tri-State in early fall 1977 as a part-time engineer. From the fall of 1977 to February 1978, he worked part-time at the studio-transmitter site. He was supervised by Ron Jones, who came by once or twice a week; otherwise, he was there alone with the evening disc jockey. G&C Exh. B-6; Tr. 2767-68. He never saw Leverant at the studios. Tr. 2770. Esch said that Ron Jones and a disc jockey ("Dave") always referred to what Robert Melton had said when they talked with him. For example, they related that Robert Melton would decide whether Esch stayed or was up-graded to full-time. Tr. 2770-74, 2776-77. Jones told Esch that Melton was particular about the technical performance of the station, wanting it as "clean" as possible. Esch was left with the impression from Jones (and "Dave") that, while Leverant was the nominal General Manager, Robert Melton was in charge and had money invested in the stations. G&C Exh. B-6; Tr. 2795.

38. *Tri - State Witness Testimony* : On its behalf, Tri-State called eight employee witnesses: Lloyd Melton, Norma Hein, Ronald Croft, Harold Shumway ("Mike Mitchell"), Thomas Mueller ("Todd Wallace"), John Edward Jennings ("Bobby Christian"), Jeffrey Colson ("Jay Stone"), and Ronald Jones. The record reflects that, within a few weeks after Robert Melton originally became General Manager of KUPD, he hired his brother Lloyd as Station and General Sales Manager. Tr. 3372. Lloyd Melton testified that, from late 1971 to September 1974, his brother was "pretty much" in complete charge of the stations' operations. Tr. 3413-14. Until September 16, 1974, KUPD had two other salespersons: Ron Croft and Harold Shumway. When asked at hearing, Lloyd Melton testified that he and the other salespersons each handled "10 to 50" accounts. Tr. 3383. But, at his earlier deposition, he had said that he handled "50 to 100" accounts. Tr. 3388-89. When he was provided with an opportunity to reconcile his conflicting answers, Lloyd claimed closer to "50" active accounts from 1971 to September 1974. Tr. 3391, though he claimed that he had more billings than the subordinate salespersons. He testified that Robert Melton had "35 to 50" accounts in October 1974. Tr. 3399-3400, and represented that, even before Robert Melton was demoted to a salesman, he had "10 to 50 active accounts." Tr. 3392. Lloyd Melton was asked to identify what accounts Robert Melton had in the fall of 1974. He said that his brother worked on Firestone Tires and Western States Tire, but he could not recall any cash accounts for Robert Melton. Tr. 3402. He could not recall his brother's cash billings, but he did remember that Robert worked on "a lot of" "trade-outs."

39. At hearing, Lloyd Melton asserted that Ron Croft was the highest paid salesperson during 1976-77, until he was shown income records which established that both he and Robert Melton earned more than either Ron Croft and Harold Shumway in 1976 and 1977. He then conceded that his prior statement was not accurate. Tr. 3421-28. Nor could he say why Robert Melton's cash compensation went from $38,400 in 1977 to $67,600 in 1978. The compensation for other salespersons did not increase from 1975-1977, *unless* they sold more advertising; otherwise their permitted draws and commission on commercials sold remained the same. G&C Exh. E-4; Tr. 3430-31. Moreover, unlike all other salespeople, Robert Melton was not on commission, but a regular salary. Lloyd Melton suggested that his brother was not on commission because a "senior salesperson" could "break the station," although he conceded that at the time of hearing several commissioned salespersons made large salaries. Tr. 3431-32. Although Lloyd Melton testified that "managers" were generally paid on a "salary-only" basis "so you could pay them less," Tr. 3431, he said Robert Melton was on salary "because he had always been on one." *Id.*

40. Lloyd Melton also conceded that he consulted his brother during the September 1974 to 1978 period about non-sales matters, and that he and Robert held private meetings with Leverant to discuss station business during that period. Tr. 3437-38. He was unable to recall these meetings at his deposition, but at hearing he said that Norris did not attend these meetings, nor did Leverant on numerous occasions. Tr. 3449.

41. Tri-State witness Norma Hein, at the time of hearing, was a KUPD-KUKQ salesperson. She earned $93,000 in 1985 and approximately $80,000 in 1984. Tr. 3343. She has known Robert Melton since 1966, when they worked together at KRUX. Tr. 3232, where he had helped her get a job as secretary to the General Manager. She later became Robert Melton's secretary when he was made General Manager of KRUX. Tr. 3234. Their friendship is "close." Tr. 173-74, 3235, 3256. Robert Melton has given Hein expensive jewelry and clothing, and they have vacationed together in Las Vegas, California, Hawaii, Europe and Mexico. Tr. 3261, 3257-60. Hein buys gifts for Melton's children, clothing for him, she deposits his paychecks, arranges for his insurance, pays his bills, keeps records for him, and looks after other personal matters for him. Tr. 3292, 3255-56, 3315, 3335. In contrast, Hein's secretarial work for Leverant, from September 16, 1974 to early 1977, did not include keeping any of his personal records. At the time of hearing, Hein and Melton were also partners in a stock and silver investment partnership.

42. Hein began working at the stations within a week of Melton's original employment. Tr. 3237. Until mid-September 1974, when Melton was "demoted," Hein had been his "secretary" and "general assistant." Tr. 3243. After that, until 1977, she continued to do his work. Tr. 3244-45. Beginning in mid-September 1974, she shared an office with Leverant, although she retained Melton's records. Tr. 3246-47. Hein said in her written testimony that she continued to perform virtually all of Melton's secretarial work after he was "demoted." Tri-State Exh. 22 at 3. However, when asked at hearing whether she typed "letters or anything of that sort" for him during that period, she said she claimed not to recall doing so. Tr. 3248.

43. Hein also said she never recalled receiving cash advances or loans from Tri-State in the mid-1970's. Tr. 3248. However, when she was shown check requests for advances for her which were provided on October 18, 1974, and December 3, 1974, for $50 and $100 respectively, she recalled that she received those advances because she "was broke." Tr. 3249. When the station was in receivership, a check request on October 17, 1973 shows

she received a $1300 personal loan. G&C Exh. E-73. Hein said she understood that sum to be a "bonus" for the two preceding years; she said that Norris told her about it and that Melton approved the payment. Tr. 3249; G&C Exh. E-73 at 3.

44. Tri-State witness Ronald Croft, at the time of hearing, had been a full-time salesperson for the stations since graduation from college in 1971. Tr. 3006-07. His 1985 salary was $89,500 and, in 1984, he earned $58,000. Tr. 3040. Croft was hired by Lloyd Melton. He met Robert Melton, who was the General Manager after he was hired, but he remembers being told in 1971 that Robert Melton and Norris were buying KUPD from Grimm and Clifford. He has always believed that they were involved together in owning the stations. Even when Melton became a salesman, Croft was not told that Melton was no longer an owner, and Croft continued to believe him to be an owner. Tr. 3062.

45. Croft also testified that he was unaware that Leverant had any other employment beyond that of General Manager of Tri-State's stations from mid-September 1974 to February 1, 1978, but he did note that Leverant was out of the office 60% to 70% of the time. Tr. 3016. Croft made 6-10 sales calls each day and serviced 8-10 advertising agencies in the 1974-78 period. Tr. 3016-17. He testified that Robert Melton, from mid-September 1974 to February 1, 1978, was only a salesperson at Tri-State. Croft knew of no other titles, such as "Merchandising Coordinator," which Robert Melton purportedly held during that period. Croft did not know whether Melton handled "trade" accounts from September 1974 to February 1978. Tr. 3021, 3060; Tri-State Exh. 18, and could not identify those sales accounts Robert Melton handled during 1975-77. He believed that salespeople were "independent agents," so he did not know what other salespeople did. Tr. 3068-69.

46. Croft said he remembered that Robert Melton did attend the daily early morning sales meetings between September 1974 and February 1978. Tr. 3046. When it was pointed out to him that at his deposition he had claimed that Melton probably attended only half the time, he revised his testimony saying that he, himself, did not attend all meetings, but that Robert Melton attended half of the meetings which he attended. Tr. 3047.

47. Croft also claimed in his sworn statement of August 22, 1986 that Robert Melton did not accompany him on sales calls during the 1974-78 period, as did his deposition testimony. Tr. 3028. But, when examined at hearing, he said that Robert Melton "may have." He was then asked if he had any recollection of Robert Melton accompanying him that he did not have at the deposition, or when he prepared his prehearing statement. He said at first that he did not know, but then claimed that Tri-State's counsel had "refreshed his recollection" about the "Jeans Galore" promotion. Tr. 3028. He remembered that Melton went with him to Jeans Galore (which was Croft's account) to discuss a "DJ for President" promotion. Tr. 3029-31. Yet, when asked for other examples, Croft could not think of any. Tr. 3033. When asked if Melton had accompanied him to the "Ed Lane" account, Croft admitted that it was "highly possible," Tr. 3033, just as it was possible that Melton accompanied him on other occasions. Tr. 3045-46.

48. Tri-State witness Harold Shumway (a/k/a "Mike Mitchell"), at the time of hearing, was a salesperson at KUPD. He had worked with Robert Melton since 1957, when they had worked together for an automobile dealer. Tr. 3086, 3088. Shumway became Program Director at KUPD in 1971. Tr. 3089, 3095; Tri-State Exh. 25, at 1. In 1970 or 1971, Robert Melton introduced Shumway to Jack Norris. Melton told Shumway that he and Norris had been trying to buy a station and that "they were going over" to KUPD and Melton asked Shumway to join them. Tr. 3094.

49. Shumway made $50,000 as a salesperson for Tri-State in 1984, and between $55,000 and $60,000 in 1985. Tr. 3118. Shumway left in his job at KUPD in 1972; but, in July 1973, he was rehired by Melton as a salesperson. He again left, in 1979 or 1980, to open an advertising agency, but later returned to the stations. Tr. 3093-94, 3095-98. Shumway claimed that, from September 1974 until early 1978, Robert Melton was only a salesperson. He never heard Melton called a "Merchandising Coordinator," and he never knew that Melton had any responsibility for "trades" at the station. Tr. 3122. Shumway said he never paid much attention to what other salespeople were doing, and could not say exactly what Melton was doing from September 1974 to February 1, 1978. Tr. 3137-38.

50. Another witness called by Tri-State was Thomas Mueller (a/k/a "Todd Wallace"), Program Director of the stations from May until August 1975. He had known Lloyd and Robert Melton from the time they had worked together at KRUX from 1970 through 1972. Tri-State Exh. 26; Tr. 411, but he did not recall that Robert Melton was ever KRUX's General Manager. Tr. 423. Wallace's written testimony claimed that he was hired by General Manager Leverant as Program Director. Tri-State Exh. 26, at 1. But, in a February 10, 1986 letter to Robert Melton (which Melton testified was accurate), he claimed that Lloyd Melton had hired him. Tri-State Exh. 34; Tr. 446. On cross-examination Wallace equivocated: "I mean Barry and Lloyd hired me. That's what I mean. I mean, I don't know who hired me, but both Barry and Lloyd were there." Tr. 427-28.

51. Wallace worked at Tri-State's studios where he supervised announcers. Tr. 430, and rarely saw salespeople or Robert Melton, Leverant, or Lloyd Melton. Tr. 430-31, 443. He did, however, talk to Lloyd Melton "every couple of weeks" to try out ideas; at least once Barry Leverant and Robert Melton joined them in their discussions. Tr. 431, 444. One time, he says, he asked Robert Melton about a promotion that was running. Tr. 432-33.

52. After leaving Tri-State, Wallace began a consulting and research service to help broadcast stations improve their programming. Tri-State retained his firm in 1977, and in 1979 or 1980. At the time of hearing, Tri-State was a subscriber to Wallace's syndicated "radio tracking" index. Tr. 433-36. When Wallace met with Robert Melton in 1986 to sell him his syndicated research service, Melton asked Wallace to contact people that had worked for him when he was Program Director with regard to what Melton called a "strike" application that had been earlier filed against the stations. Tr. 399-401. Wallace contacted people who worked for him when he was Program Director and, in April 1986, he was paid $2,000 by Tri-State for so doing. Wallace said he contacted John Jennings, Randy Lane, Madeleine Lane and Rick Brady by form letter, in which he inquired as to whether the recipients believed (as he did) that Robert Melton had never exceeded his authority or capacity as a salesman. G&C Exh. E-20; Tr. 398. Wallace showed the letter to Robert Melton before it was sent, and Melton told him

the letter was "fine." Melton did not tell Wallace what the issues were in this proceeding. Tr. 408-09. However, the Wallace letter claimed that former owner, Jack Grimm, had filed a "strike" application even though, Wallace testified, he knew at the time that was not the case. G&C Exh. E-20; Tr. 408. Wallace also admitted that he knew there was a rumor in the 1970's that Robert Melton was really directing Tri-State's stations. Tr. 413.

53. Upon further questioning at hearing, Wallace revealed that he also sent his letter to Burt Goodman, Dave Muncey and Ron Engleman. Tr. 405-07. He also called Madeleine Lane and read her a prepared script, but she never responded. Tr. 413. Wallace conceded that he did *not* keep track of comments that "would not be of service to KUPD" and that, while he made transcriptions of his conversations, he did not do so when Burt Goodman disagreed with him. Tr. 416-17. Dave Muncey did not want to get involved, and he provided no opinion as to whether he agreed with Wallace. Ron Engleman said he did not agree with him, and that he had a run-in with Robert Melton when he attempted to collect his final paycheck (after he had resigned to work at a Denver station). Tr. 418, 419. Wallace did not make a transcript of the Engleman or Muncey conversations because they were not helpful to Tri-State. Tr. 417-20.

54. Tri-State witness Jeffrey Colson (a/k/a "Jay Stone") represented in his written testimony that he was Program Director at Tri-State from mid-1976 to sometime in 1979, Tri-State Exh. 17, and that he had reported to Lloyd Melton. Stone supervised on-air personnel and other employees at the transmitter site, and he himself worked an air-shift from 2 to 6 p.m. Tr. 2013. While Stone went to the Tri-State Phoenix business office every 2 or 3 months to correct logs, he never saw Robert Melton perform any sales functions, and he never saw Leverant there. Tr. 2022, 2038-39.

55. Stone was responsible for "on air" promotions at the stations, and one of his promotions resulted in Arbitron (the rating service) suing Tri-State for distortion of ratings. Tr. 2028-30. Further, Stone was involved in personal legal proceedings, and Leverant represented Stone when he declared bankruptcy in 1976 or 1977, Tr. 2039, and when he was arrested at the stations on a charge of fraudulently obtaining controlled substances (to which he pled guilty and was put on probation). Tr. 2039-41.

56. Stone again worked at KUPD in 1980 or 1981 for five or six months, and again in 1984 (or early 1985) for about nine months. Tr. 2041. He was hired by Robert Melton on those occasions, and he remembered Melton referring to the competing application in this proceeding as a "strike" application. Tr. 2049. His written testimony indicated awareness of the allegation that Robert Melton had been secretly in charge of the stations, and that Melton had been a partial owner during the mid-1970's. He said that, from his own viewpoint, this was "absurd." Tri-State Exh. 17. However, Stone conceded at hearing a slight inaccuracy, since Robert Melton was a partial owner when he worked at the station after 1979. Tr. 2025-26. Stone also corrected six other parts of his two-page written testimony: He refined that, contrary to his written testimony, Robert Melton took a "very active" role in programming after the AM and FM stations began separate programming, Tr. 2053, and that, thereafter, Stone approached only Robert Melton about programming. Tr. 2054. At hearing he also changed his prior statement that he never saw Robert Melton function in a management capacity, and that Jack Norris was the sole owner while he worked there. Tr. 2054-56.

57. Tri-State witness Ronald Jones became an engineer for Tri-State in October 1974. Tr. 2140-42. For two days a week he would review the technical facilities at the Guadalupe studios and the FM transmitter site in the South Mountains. Tr. 2164. Jones represented that, in October 1974, Leverant fired engineer Conrad Berg and hired engineer Paul Hanes, Jr., Tri-State Exh. 21, at 1, although Jones conceded that he did not observe either the hiring or the firing, and was involved only in the hiring of Hanes. Tr. 2140-41, 2144. From October 1974 to March 1975, Jones was simultaneously a consultant to four other Phoenix area stations. Tr. 2151-52. From March 1975 to February 1978, he was Tri-State's Chief Operator, but he worked on an "independent contractor" basis. He would go to Tri-State's antenna site or studios in the early morning, stay until 8 or 9:00 a.m., and return again in the afternoon about 4 or 5 p.m. Normally, he was not there during the day; he did his work at night. Tr. 2218-19. After March 1975, and until sometime in 1976 or 1977, he remained responsible for the technical facilities of five other Phoenix stations, Tr. 2147-49, visiting them, talking with their managers or program directors, and supervising their technical facilities. *Id.* From October 1974 to January 1978, Jones operated Circuit Research Labs, Inc. to develop products and design radio equipment. Tr. 2155-56; Tri-State Exh. 21. He also worked on an answer-on-hold telephone system, Tr. 2156-59, and KUPD began using equipment Jones had developed. Tr. 2158.

58. Jones testified that he had heard that the Commission had refused to allow Robert Melton to own or manage Tri-State's stations, though he also had heard that Melton was nonetheless "pulling the strings." Tr. 2179, 2200-01. He testified that Robert Melton just "sat around" and "did not do much of anything," Tr. 2170, and that people considered that Melton was nominally a salesman because the Commission would not let him manage or own the stations. Tr. 2180. In his written testimony, Jones stated: "I really did not like Bob Melton but I have no information that would support the position that he was in a management position of any sort. He did come out from time to time and ask questions and look around, but so did almost everybody else." Tri-State Exh. 21. At hearing, Jones testified that the other salespeople frequently brought commercial tapes to the studio, but that Melton came to the studio only occasionally. Tr. 2191-92. He said that announcers would tell him that Robert Melton would visit the studio and inquire about the equipment and engineering. Tr. 2172, 2175, 2215. Jones also remembered being told (in December 1977) by Leverant that he was leaving, and that Robert Melton was going to take control of the stations. Tr. 2189, 2212.

59. In support of its position that Robert Melton was no more than a salesperson at the stations at the critical time period, Tri-State also called John Edward Jennings, III (a/k/a "Bobby Christian"), who began working at Tri-State in April 1975 as Assistant Program Director. Christian said that when Program Director Todd Wallace left in late June or early July 1975, Wallace recommended Christian for the job, which he held at 1-2. Christian explained that Wallace is a "good friend," and that they have a good professional relationship. Tr. 1945, 1948. Christian had been hired by Wallace, in 1973 at KRIZ, when Wallace was Program Director there. After Wallace became the

Program Director of KLIF, Dallas, he took Christian with him. Tr. 1945. Wallace also hired Christian when he moved to KUPD in 1975. Christian has, in turn, recommended and used Wallace's programming and market research services at stations he has programmed in Denver and Pittsburgh. Tr. 1946-47.

60. Christian said Wallace contacted him about this hearing proceeding in March, 1986, and told him that there was an attempt to take Tri-State's licenses away. Wallace, however, did not tell him there was a competing applicant, Tr. 1944-1950, but he was asked by Wallace to write a letter mentioning those parts of their 1986 conversation that Wallace said would be relevant. Tr. 1951, 1952.

61. Christian initially testified that he was hired to work at KUPD by Wallace (Tr. 1946), but later testified that, after a meeting with Leverant and Lloyd Melton, he was hired by Leverant. Tr. 1959-60. Christian explained that he spent his workday at the Tempe studios, where he supervised disc jockeys and also worked an air shift. Tr. 1957-58. During his employment, he would discuss programming with Lloyd Melton, they would occasionally meet for a drink, or Christian would go to the business office to talk with him. Tr. 1975, 1973, 1989-90, 1999. Christian would also ask Robert Melton for his opinion about programming and Melton suggested to him contest prizes. Tr. 1926-63, 1966; Tri-State Exh. 20.

62. Tri-State argues that the ALJ's ultimate conclusions regarding the testimony of the G&C witnesses (which it describes as "secretaries and clerical personnel") is "gravely flawed." Tri-State Exceptions at 9, 14. Tri-State also argues that its own witnesses' testimony is "vivid, compelling corroborative evidence" that ultimately demonstrates that Barry Leverant (not Melton) managed the stations during the critical time period (*id.*, at 15). Conversely, both G&C and the Bureau submit that the ALJ's findings and conclusions regarding witness testimony are correct, and there are no bases for reversing the ALJ's credibility and demeanor determinations adverse to Tri-State.

63. *Melton's Sales Activities* : The ALJ extensively details the various sales accounts Melton was said to have carried during his time as an alleged "salesman" from 1974 to January 1978. *See* I.D., paras. 47-67. However, the examination of Robert Melton's sales activities was hampered because Tri-State claimed that, aside from a few accounting work papers retained in the files of Tri-State's accountant, Edward Espinoza, the business records (including the accounting books), for all the years before 1980 had been "destroyed." Melton also testified that there had been ledgers for his accounts, sales contracts, continuity forms, sales reports and business cards, but that in 1980 all the "barter and trade" records for the stations' accounts were no longer extant. Because there were few (if any) contemporary records, Tri-State relied at hearing on Melton's oral recollections as to the accounts he carried and serviced as a salesman.

64. At hearing, Melton was asked to identify the accounts for which he was responsible and to identify the person he contacted about each account. He could initially name only three advertising accounts and one contact person (Don Sanderson). When afforded an opportunity to provide a more complete answer, Melton represented that, after he consulted with other salespeople at the station and his lawyers, he recalled eleven accounts and the names of eight contact persons. With respect to these additional accounts claimed by Melton, the ALJ concluded that there was insufficient evidence to corroborate his claim, and/or that the account merely involved a "trade" from which only Melton (not the station) benefited. For example, Turf Paradise/Arizona Downs (as witnesses Fabre and Mertz testified) was actually Norma Hein's account. The Paul LeBoeuf Agency was unknown to witness Malatak, who had worked at Tri-State and at three Phoenix advertising agencies, and was also unknown to Tri-State's traffic director, Mertz. The only record relating to "LeBoeuf" shows a 1974 Tri-State contribution to the "Paul LeBoeuf Memorial Fund." Another account allegedly carried by Melton was Lazy Lou's Fish and Chips, a franchise restaurant chain in which Melton and Norris at one time held a franchise. Norris' deposition stated that the restaurants carried no ads on the stations from 1975 to 1978; however, after Melton claimed it was his account, Norris changed his testimony to say that Lazy Lou's advertisements were broadcast. But neither Mertz, who directed the stations' traffic, nor Malatak, who kept the sales records, could recall the account, although Melton had claimed it was one of the "larger" advertisers. Ron Croft, frequently the station's top salesperson during this period, also could not recall any such account.

65. Concerning the other advertisers claimed by Melton, the ALJ concluded that the most objective evidence established that the Phoenix Motor Company account claimed by Melton was, in fact, always handled by Harold Shumway, that the Cobre Tire account was not serviced by Melton but by Norma Hein, and that the Dunes Hotel and Country Club account was actually handled by Lloyd Melton. The Appliance Hardware and Sunland Lincoln-Mercury accounts simply involved "trades" for merchandise, which Robert Melton then used for his personal benefit. I.D., para. 291.

66. *Melton's " Reciprocal Trade Advertising " Accounts* : Reciprocal trade advertising is a practice endemic to the industry, especially in a radio broadcast facility, and generally involves the broadcast of commercial announcements in exchange for goods or services rather than for cash. Such accounts are commonly known as "trade-outs" or "trades," and it is not uncommon to broadcast commercials with a value of two or three times the cash value of the goods or services received in exchange therefor. For example, $15,000 in advertising could be broadcast in exchange for only $5,000 in "bartered" goods or services. This results in otherwise unsold airtime being exchanged for merchandise or goods that could be used to benefit the station or to the personal benefit of its owners or employees. Because of the potential for abuse of such activities, it is not uncommon for tight controls to be placed on this practice by ownership (or top management).

67. Ironically, Tri-State relies chiefly on Robert Melton's "trade-out" agreements to demonstrate that he was merely a salesman and the station's so-called Merchandising Coordinator. Indeed, at oral argument, counsel for Tri-State displayed a barter agency agreement signed by Melton to corroborate his role (Tr. 4660):

> [Tri-State Counsel]: Ms. Laden [Bureau Counsel] got up and said, [there is] no evidence, the salesladies all said that they never saw a contract with his name on it. One piece of paper that survived. Boy, I wish there were others. G and C Exhibit E-32, the trade agreement, merchandise cash services contract with William J. Tanner, dated February 2, 1977,

signed by Bob Melton, no title attached to it. That's one piece of evidence, documentary, contemporaneous.

Under that agreement, the barter agency received $10,000 in air time in exchange for the payment of $5,000 in American Express charges. But there is no evidence that any other salesperson had such authority, and Lloyd Melton concurred that his brother had unsupervised authority to legally bind the stations. I.D., para. 291; *see also* Tri-State Exceptions at 10 (emphases added):

> *Melton did. .. receive considerable compensation via goods and services supplied to him from trade - outs.* The extent of those trade-outs was largely unsupervised, at least by Lloyd Melton and Barry Leverant. But Melton had the approval of John Norris . . . .to obtain trade-outs for his own personal use, and Norris was personally aware of the fact, *if not the specific extent of it.*

68. For his part, Robert Melton represented that he was given responsibility for "trade-outs" in 1975, Tri-State Exh. 12 at 9, for purposes of station promotions, giveaways and contests. Tr. 706-07; Tri-State Exh. 9, Att. 10-E. Melton also claimed that, in May 1975, he was designated the stations' Merchandising Coordinator, but no other witness supports his claim. For example, Tri-State's own witness, Harold Shumway, does not remember Robert Melton having any such position or title. Tr. 3121-22, nor did Ronald Croft. Tr. 3021, 3060. Norma Hein, Robert Melton's close friend, recalled him handling "some trades," but she did not remember that Melton was Merchandising Coordinator. Tr. 3282-84. Conversely, Norris claimed that Robert Melton did hold that title. Tr. 1553, and that he did not restrict or define Melton's authority to exploit "trades." *Id.*

69. In that regard, Melton claimed that, with his 1974 demotion, he received a salary cut of $5,000, but was allowed to "supplement" his salary through the receipt of goods and services received in station "trades." Tr. 238-39; Tri-State Exh. 12 at 5-6. Further, whereas other salespersons worked on a "commission only" basis, Melton said he had a "special arrangement" providing him with a salary, because he "simply could not afford to remain at the stations working on a commission." Tri State Exh. 12 at 6. He justified this special treatment because, "in my case, I had broad radio knowledge. I wouldn't have been just one of your run-of-the-mill salesmen . . . ." Tr. 241.

70. Melton also admitted that he used items received by the stations in "trade-outs" for a new home he was building. Tr. 294-95. [3] Thus, he acknowledged a "trade" with Lyon Moving and Storing for his benefit, a $1,200 "trade" from Daniel Plumbing for work on his house, and that he even resolved a legal dispute with that plumber by providing him tires or appliances Melton had secured through other "trades." G&C Exh. E-9 at 7; Tr. 304-305, 311-12, 314. Melton also had a personal "trade" agreement with Medallion Pools. G&C Exh. E-9 at 3; Tr. 367, and with Western Insulated Glass for work done on his house. Tr. 315; G&C Exh. 9 at 7.

71. In addition, Melton obtained a 1977 "trade" agreement with Electronic Supermarket, which Melton said he could not identify (but admitted it could have been for goods he received). A trade with Hinckley Lighting for $2,457 was disclosed as for his house. Tr. 366-67; G&C Exh. E-9 at 1-2. This same exhibit also included "trades" with Mike's Carpet, Rug Bug, and Rug Bug Direct. Melton could not identify these accounts, but admitted acquiring rugs and carpets for his house in 1977. *Id.* Similarly, he also was not sure whether a "trade" with United Bedrooms was for a bed he received, or a bed the stations gave away; and, he claimed not to know what a "trade" with Stereo Sight and Sound listed under his name represented. G&C Exh. E-9 at 1-2; Tr. 367-68.

72. Another 1977 "trade" was from Del Camino Nursery in the amount of $1,329.67. Melton first claimed that this was not for landscaping, but rather to acquire "Christmas things," perhaps "a couple of plants" for a salesperson. Tr. 369-70. After more questioning, he said he "could have" gotten a small tree for himself. He was then asked whether the following entry on the statement represented yard work at his house: "3-29-67 considered goods not received. Ripped-off by the people who did the yard work. A thousand dollars -- Bonus to RLM." Melton then admitted that he "might have gotten two trees." Tr. 370-71.

73. Numerous other Melton "trade-outs" appear in the record. For example, in 1975, Melton had a Lincoln Continental, which he said his spouse and children "could have" used. Tr. 295-96. Moreover, his spouse and children had a KUPD gasoline credit card with which they charged their own gasoline. Tr. 296. Melton also acknowledged that he used "trades" at the Las Vegas Dunes Hotel/Casino in April 1976, and, in July 1976, used trade at Circus Circus Hotel and Casino in Las Vegas. G&C Exh. E-9 at 5, 6; Tr. 308-09, 312. He also used a personal "trade" with Sawyer School of Aviation to take flying lessons. G&C Exh. E-9 at 5; Tr. 309, and he even "traded" school tuition for his son at Camelback Desert School. G&C Exh. E-9 at 1- 2, 5; Tr. 310, 366. He personally used a $1,290 "trade" with Shuback Jewelers, G&C Exh. E-9 at 7; Tr. 315, and part of a trade with Young Limited, a clothing store. G&C Exh. E-9 at 1-2; Tr. 368.

74. The record further reveals that Melton "traded" personal liquor, Tr. 369, retaining a $700 beer keg dispenser after a station party in 1976 or 1977. In December 1977, he also received two bicycles from station "trades." G&C Exh. E-9 at 16; Tr. 371-73. Melton even arranged to pay his local attorney with other "trade" merchandise for work on his parents' will, but admitted that these legal services "should not have been charged" to Tri-State. Tr. 373. This same attorney also worked on Melton's 1977 automobile accident litigation and was again paid in station "trades." Tr. 1599-1600. Robert Melton also took advantage of 1976 "trades" at John's Green Gables, Macayo's, Giraffe Applegate's, Circus Circus and Hughes Air West. G&C Exh. E-10, at 14-15; Tr. 327-30.

75. When questioned about "trading" for his automobiles, Melton testified that "he could not recall" that the station acquired a new Lincoln for him in 1975, but after being shown a work sheet from the files of Tri-State's accountant labeled "Tri-State Broadcasting 1976 Auto Expense," (showing an entry of $333.98 to "Ford Motor Corp." for lease of a 1975 Lincoln Mark IV to Robert L. Melton), G&C Exh. E-11, Melton admitted that he "could have" received a new car. Tr. 339. When questioned about other cars personally used by him during 1975-76, he again claimed that he "could not recall," adding that his wife had a car, but that he could very

easily have owned that himself. Tr. 341. However, he said it was possible that the station could have owned it and leased it on his behalf. Tr. 342. In fact, station records disclose that, on December 31, 1975, Tri-State obtained by "trade" a Ford station wagon for use by Melton's family. Moreover, on December 31, 1975, the stations purchased a van which Melton said was used for promotional purposes; but he conceded that he sometimes took the van home and he eventually gave it to his children. Tr. 346-47. Melton also drove a station-owned Lotus Esprit for a time. Tr. 1586.

76. *Melton's Acquisition of Ownership Interest in Tri - State* : Although Melton said he had intended for many years to purchase a station with Norris, he said he "never looked" for another facility after Norris acquired the two stations at issue here in 1975. Tr. 789. Moreover, he maintained that following Norris' acquisition of Tri-State, he never discussed with Norris the possibility of his acquiring part of Norris' interest until late 1977. Tr. 788. On the other hand, Norris said that he and Melton discussed that possibility between "five and ten times after January 1975" and before February 1, 1978. Tr. 1633. In his written testimony, Norris represented that the matter was raised with counsel in the fall of 1977 or early 1978. On cross-examination, Norris changed his testimony and said discussions began in 1976 and continued in 1977, when communications counsel became involved. Tr. 1634. They also discussed the possibility of Melton's becoming an officer and director as well as General Manager. Tr. 1635.

77. Before proposing that Melton acquire an interest in Tri-State, its counsel discussed the matter with the Commission's staff. Thereafter, by letter of January 30, 1978, Tri-State counsel advised the Commission that Norris intended to sell to Melton a 49% ownership interest. Counsel accompanied his letter with the aforenoted (*see supra*, para. 17) January 24, 1978 letter from Norris to the Commission and a draft stock sale agreement between Norris and Melton. In his letter, Norris said that Melton would be allowed to acquire a 49% interest in Tri-State at "book value," but did not specify any dollar amount. *Id.* The agreement further provided that Melton, "a most valued employee," was to pay Norris "such sum of money as represents the book value of said common stock as reflected on the books and records . . . on December 31, 1977," *Id.* ; Tr. 319-20. Again, no specific figures were disclosed, but payments would be made in twenty equal annual installments beginning on January 15, 1979, and 7% interest would be charged on the remaining balance. *Id.* It was claimed that a 49% interest was established because Tri-State's counsel believed the Commission would not approve a greater interest, and a share in excess of 49% would also require the filing of a "long form of application" for Commission approval. Tr. 1641-1642.

78. On February 1, 1978, Melton and Norris entered into a partnership agreement ("Mel-Nor Development"), [4] and a revised stock sale agreement. The executed stock sale agreement differed from the draft submitted to the Commission on January 30, 1978. Tr. 1661. *Compare* Tri-State Exh. 9, Att. 12 at 318-20, with Tri-State Exh. 9, Att. 13, at 325-26. Instead of the previously unspecified "book value," the price for Melton's 49% interest was set as $114,556. The payment terms were also changed: Under the new agreement (1) Melton was to pay Grimm & Clifford "$87,672.00 representing 49% of the discounted amount" owed by Norris (in a sum equal to 49% of the $2,500.00 monthly payment); (2) Melton would pay Norris interest only until Grimm and Clifford were paid in full; and (3) Melton would then begin paying the remaining $26,328 owed to Norris (over 10 years), resulting in a total purchase price of approximately $114,000. The interest rate was also lowered to 6%.

79. Although Melton's cost for his 49% of Tri-State's stock was ultimately set at $114,556, there is great discrepancy in the record as to just how that figure was reached. Thus, while Norris represented that he negotiated this price with Melton and Melton's personal accountant, Edward Espinoza, [5] at "arms-length," Tr. 1665, Espinoza vigorously denied having been involved in any price negotiations with Norris. Tr. 1207-08. But Melton insisted at hearing that Espinoza had been instructed by him to negotiate the price with Norris, Tr. 793, and it is therefore unclear as to who, if anybody, conducted these "arms-length" negotiations.

80. As to the price itself, Tri-State's accountant, Arthur Oleksy, advised Norris that based upon the $327,500 Norris had obligated to Grimm and Clifford to acquire the stations from the Receiver, the "book value" of Melton's 49% share could be set at $160,475. Tr. 1644; G&C Exh. E-40. Oleksy also suggested that Melton's salary be raised by $15,000 per year to permit Melton to pay for his 49% share of Tri-State. G&C Exh. E-40 at 2.

81. Melton's accountant, Espinoza, claims to have used a different methodology and determined that, as of December 1977, Tri-State's total stock value was approximately $106,000, [6] Tr. 1276, and he concluded that Melton might pay approximately half of that amount for his 49% (after taking into account a "lack of marketability factor" because Melton would hold only a minority portion). Tr. 1212, 1277. Actually, Espinoza apparently devised three separate scenarios in which Melton might pay, respectively, $61,378, $75,950, or $115,000 for his 49% Tri-State interest. Tr. 1192. Still, Espinoza swore that he had no idea where the eventual $114,000 figure came from, *id.*, except that Espinoza did not think Norris should show a loss that might arouse the interest of the Internal Revenue Service. Tr. 1271. He also advised Melton that any purchase price below "fair market value" would be considered taxable compensation to Melton. Tri-State Exh. 19, Att. 1 at 2.

82. However, in valuing the Tri-State stock, Espinoza did not consider any of the following: (1) the past or immediate cash flow profit of the stations; (2) the selling prices of comparable stations in Phoenix or anywhere else; or (3) the value of the real estate also owned by Tri-State (even if worth $2 million). Tr. 1271-79. Nor did he consider the station's audience ratings, Tr. 819, 1278-79, and he sought no expert advice on the valuation of radio stations. Tr. 1194, 1210, 1268. Further, although Espinoza had testified as to valuing businesses at approximately five times after-tax earnings (annualized and averaged for the past three years), *see* Tr. 1264, he did not use that formula in valuing Tri-State, which had earned more than $150,000 in 1977, Tr. 1268, and had shown substantial profits in three of the previous five years. Tr. 1270. And, Espinoza claims not to have known that broadcast stations "were typically evaluated at 8 to 10 to 12 times cash flow, not after-tax earnings." Tr. 1195. In the end, Espinoza claimed that the $114,000 set for Melton's 49% was "arrived at somewhat arbitrarily," essentially to escape IRS scrutiny. Tr. 1272. Suffice it that

sometime between 1980-1983, Tri-State listed the stations with a broker at a sales price "in the neighborhood" of $7,500,000.00. Tr. 1401.

83. Robert Melton was asked at hearing if Espinoza's analysis of the transaction was to avoid tax. He initially denied any discussion with Espinoza about creating a transaction with no out-of-pocket costs after taxes, but he later changed his answer to say that he had instructed Espinoza to "find an amount" that would have the best tax advantage. Tr. 830, 833-35. Espinoza also testified that Melton told him (1) he wanted to pay as little as possible for the stock; (2) he did not want to make any cash payments; and (3) he wanted tax consequences to be considered. Tr. 1190.

84. When Norris was asked why he agreed to a price of only approximately $114,000 he replied (Tr. 1645):

> I was very very very interested in Bob Melton being an owner in this company. I had a moral obligation, as far as I saw, with Bob. He was originally [to] have been a 50/50 partner from the very start. He was, as far as I was concerned, the critical link to me being successful in that radio station. And about this time I was starting to get some very serious pressure from the State of Arizona at Marston's, Incorporated.

85. In another conflict, Norris initially claimed that, pursuant to the stock purchase agreement, Melton agreed to pay him $114,556 over a period of years, *and* to assume 49% of the remaining payments to Grimm and Clifford. Tri-State Exh. 9 at 17. Under questioning, Norris later asserted that the payments to Grimm and Clifford were part of the $114,556, not a separate, additional obligation. Tr. 1660, 1661. Norris also initially claimed that Melton had to bear all of the costs for his 49% interest; but he conceded that Melton had, in fact, received a raise from Tri-State sufficient to include his payments for his 49% interest. Tr. 1645-46. Further, both Melton and Norris claimed that Melton's share of payments to Grimm and Clifford were always deducted from Melton's salary, Tr. 844, 1663, but Espinoza testified that, at least in April, May and June of 1978, Tri-State advanced Melton his share of the payments. Tr. 1122, G&C Exh. E-9 at 9. In fact, the ALJ determined that the accounting records of Tri-State indicated that the company largely became the overseer of Melton's obligation to Norris. G&C Exh. E-9, at 10; Tr. 1124, 1125, 1126. Additionally, after the payments to Grimm and Clifford were completed in December 1985, Robert Melton did not make any payments of principal to Norris. Tr. 1664-65.

86. *Barry Leverant's Role* : A significant portion of Tri-State's exceptions appear to be directed to Leverant's actions and activities while he held the title of General Manager of the stations. Tri-State submits that the record demonstrates that Leverant clearly presided as General Manager and, thus, Robert Melton could not have acted in any managerial or proprietary capacity.

87. As indicated in para. 10, *supra*, prior to the Commission's December 1974 approval of the assignment of the Tri-State stations to Norris, the stations' Receiver wrote to the Commission and advised that Robert Melton had been "replaced by a new General Manager who is himself an attorney," *See id.* In order to assume the role of the new General Manager, that attorney, Barry Leverant, proposed to take a one-year leave of absence as an Assistant City Attorney for Phoenix. Tri-State Exh. 10 at 2, 6. Although he had no previous broadcast or management experience, Leverant agreed to keep the job under the Norris regime, he said, because he was acquainted with the lawyers working with Norris and Robert Melton, was friendly with Melton, and could therefore "control" him. Tr. 4326-27. He kept Melton on at the station because of Melton's "talent in certain areas," though Melton was a "very dominant person." *Id.*

88. Lloyd Melton testified that, prior to Norris' December 1974 acquisition of the Tri-State stations, General Manager Leverant "usually dropped by in the morning [for] a couple of hours a day," Tr. 3511, but that after Norris' acquisition "Leverant cut back in hours" (*id.*), and worked "less" than he had under the Receiver. Tr. 3512. After several months, however, Leverant decided to return to his former job with the City Attorney. In June 1975, Leverant notified Tri-State counsel of his return to his full-time city job, but he simultaneously retained his Tri-State General Managership, claiming that his legal duties for the city would nonetheless permit "sufficient time to properly supervise the operation of the station[s]." G&C Exh. B-23. The regular business hours of the City Attorney were 8 to 5, Tr. 4193-95; Tri-State's normal business hours were 8 to 5:30 (*see id.*). Despite the overlap, Leverant contended that he continued to work as Tri-State's General Manager approximately 4 hours per day, 6 days per week, because "no one ever worked very hard for the city," there were no official guidelines on how much time a city employee could spend on outside business activities, and that he therefore treated his city job as if it were part-time. Tr. 4194-4203. Not only did Leverant claim to be holding down these jobs (*i.e.*, Tri-State's General Manager and Assistant City Attorney), he was also concurrently maintaining a small private law practice with another Phoenix Attorney, which practice he attended to daily. Tr. 4199-4203.

89. Norris was uncertain as to whether his new General Manager, Leverant, returned to his city job in 1975 or 1976, Tr. 1483-85, but he did admit knowing that Leverant had a legal job with the city and was maintaining a private law practice while holding the title General Manager of the Tri-State stations. Tr. 1572. However, it was Norris' recollection that Leverant worked only part-time time for Tri-State after he resumed his city job in 1975. Tr. 1483. During this period, Leverant testified that he kept no regular hours at the stations, worked perhaps only 4 hours per day on Tri-State business, and was essentially "paid about $5 an hour to be General Manager" of Tri-State's stations. Tr. 4198-99. In fact, Leverant's salary at that time as General Manager was $500 per month, less than any other regular Tr-State employee. Tr. 4192, 4195.

90. Sometime in the late spring or early summer of 1976, Leverant was fired from his city job, according to him, "for the good of the service." Tr. 4200. He claimed his firing resulted from a conflict of interest; not with his job as General Manager, but because Tri-State had owed money to the city in 1974. *Id.* After his firing, Leverant testified that he increased his hours at the station "somewhat" over the approximately 4 hours per day he had previously spent as Tri-State's General Manager, but "[n]ot very much," Tr., 4203, in part because he was trying at the same time to invigorate his private law practice. Tr. 4205. Lloyd Melton recalls that, after Leverant's removal from his city job in the summer of

1976. Leverant did "pick up his hours again," though only "to the same amount of time he was spending with the Receiver," Tr. 3512; that is, "a couple of hours a day." *See* Tr. 3511. When Robert Melton was permitted in early 1978 to formally acquire his 49% interest in the stations, Leverant's employment as General Manager apparently ceased. *See* Tr. 3513.

91. Concerning his supervisory duties, particularly *vis a vis* Robert Melton, Leverant was questioned about Melton's liberal use of station "trades" for his personal use, and even their use by Melton's family. While acknowledging that, as General Manager, he was "probably" required to authorize the personal use of goods and services acquired in "trade" for commercial time on the Tri-State stations, Tr. 4213-14, Leverant never reviewed station "trades" to ascertain whether abuses were occurring. Tr. 4333-34. He claimed that Melton's use of "trades" (and Melton's family use) "never came up," but would not have been "a big point" if it had. Tr. 4214. Even after he later learned, for example, that Melton's children were using station "trades" for gasoline for their cars, Leverant was unfazed because Melton was "essential for the business." Tr. 4333-34. By contrast, Leverant, Tri-State's top management official, did not use "trades" for himself (or his family). It seems that he was not permitted by Tri-State to do so. Tr. 4213.

92. Finally, Leverant was questioned as to his compensation at Tri-State by opposing counsel (Tr. 4303-04):

> Q: Now, when you were general manager from 1975 through 1977, did you receive any raises?
>
> A: No sir.
>
> Q: Did anyone else at the station receive raises?
>
> A: Yes, sir.
>
> Q: Did Bob Melton receive raises.
>
> A: I believe so.
>
> Q: Who would normally have approved raises for Bob Melton?
>
> A: Well, after it was taken over by Jack Norris, the final authority was Jack's.
>
> Q: Well, who recommended raises for Bob Melton?
>
> A: Usually, I did.
>
> Q: You did. Now, was there any discussion by you as to why Mr. Melton was receiving raises and you weren't? Did you have any discussions with Jack Norris about that?
>
> A: No, sir.
>
> Q: You didn't think that was odd?
>
> A: No.

III. DISCUSSION RE: ISSUE 1

93. Tri-State's exceptions argue that "the I.D. is afflicted with a torrent of . . . distorted findings and conclusions regarding Melton." Exceptions at 10. It claims that no hard evidence proves that Melton covertly controlled the stations from 1974 to 1978, only gossip, hearsay, and speculation from station personnel who simply assumed Melton was a boss, but who "never saw [Melton] act in a way inconsistent with the promise to the FCC that he would not manage the stations." *Id.*, at 9. Characterizing the I.D.'s finding that Melton was "not supposed to *openly* manage the stations" (*id.* ; emphasis in original; quoting I.D. at para. 26) as a "gross and baseless distortion of the evidence," Tri-State asserts that the "assumptions" of the clerical employees called by G&C [7] do not constitute the "clear and compelling evidence of misrepresentations and lack of candor" required to disqualify a licensee. *Id.*, at 9-10.

94. Tri-State similarly complains that the I.D. employs a "selective recitation" of the facts to create "an artful but totally misleading" picture of Melton's activities at the stations. *Id.*, at 8. It asserts that, contrary to the portraiture of the I.D., the record *actually* shows that the "clerical witnesses all testified that [Melton] didn't do anything at the stations," that "[h]is engineering input was strictly limited," and that (*id.*):

> To the extent that he had contact with the other sales people, it was to aid in the sales process of the stations by helping make calls on clients from time to time regarding particular problem accounts, or proposed promotions-- but without any indication that such assistance was being rendered by Melton as a manager.

95. Tri-State does not deny Melton's extensive use of station "trades" for his personal use (and that of his family's), or the fact that these "trade-outs" were unsupervised (certainly by General Manager Barry Leverant). It does emphasize, however, that Norris was aware of this "special treatment," although not necessarily "the specific extent of it," and that, all in all, "[t]he ALJ's extended findings about Melton's trade activities on his own behalf is [sic] overstated for the apparent purpose of diminishing Melton's credibility." *Id.*, at 10.

96. Furthermore, Tri-State contends that the record proves that Barry Leverant was the true and actual General Manager during the relevant time period, that he "performed the very function that Norris expected of him, namely, to control Bob Melton and see to it that he was confined to a non-supervisory sales-related role at the stations," *id.*, at 6, and that there is no evidence that the stations violated FCC rules during that period or that complaints against the station were filed. It asserts that, while Leverant discharged his duties as General Manager of the stations only "part-time" for a period of at least one year and was "often not physically" on the premises, "[t]here is a host of testimony" that Leverant "was available at [his] law office" and accessible to station employees. *Id.*, at 7.

97. Much of Tri-State's criticism of the I.D. centers on the ALJ's interpretation and description of witness testimony. *See id.*, at 12-15. It more particularly decries the ALJ's failure to fully credit certain of the testimony of its witnesses, including Todd Wallace, Jay Stone, and Bobby Christian. *Id.*, at 15-18. In essence, Tri-State urges that, although the testimony reflects that Melton was consulted on matters ranging from engineering to station programming, there is no direct testimony that Melton ever hired or fired anyone, no testimony that Melton "held himself

out to the public or to any member of the staff as being owner or manager during the 1974-78 period," and that the G&C witnesses "never heard any conversations or saw any documentation that would indicate that he was an owner or manager, or that a subterfuge was going on." *Id.*, at 14 (footnote omitted).

98. Tri-State further asserts (*id.*, at 21):

> However much Bob Melton may have swaggered around the station, misused station trades for his personal benefit, and failed to fit the mold of a typical station salesman, the overwhelming weight of the record evidence in this proceeding is that he was not general manager of the stations from 1974-78. By the same token, there is no evidence that he had any ownership rights in Tri-State in that time period, no matter how confident he may have been perceived by some. Whatever appearance Bob Melton may have given that he was an owner, the reality was otherwise.

It also maintains that (*id.*, at 22):

> The favorable terms (*see* I.D., para. 115-122) upon which Melton was allowed to acquire his 49% interest in Tri-State do not, by *post hoc* reasoning, demonstrate prior ownership, particularly in light of all the evidence that Norris was previously the sole owner and solely carried the financial responsibility for the stations. Those terms do demonstrate, however, what Norris consistently testified to: that, if the FCC would let Bob Melton, Norris wanted and needed him, and that Norris felt a moral obligation to Melton to try to recreate as closely as possible their original 50/50 ownership proposal.

99. In light of the destruction of most of their stations' pre-1980 records, [8] the ALJ (of necessity) relied heavily upon witness testimony, and it is to the ALJ's witness credibility findings that Tri-State focuses most of its heavier fire. But the law gives to the presiding officer the primary role of making credibility findings. Perhaps the most frequently cited case on the question of the weight to be given to the credibility findings of an ALJ is *Universal Camera Corp v. NLRB*, 340 U.S. 474, 496 (1951), where the Supreme Court stated:

> We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The substantial evidence standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case had drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case.

100. Indeed, as we recited in *TeleSTAR*, 2 FCC Rcd 5, 13 (Rev. Bd. 1987):

> The Commission has recently advised the Court of Appeals "of the Commission's general reluctance to overturn the credibility determinations of an ALJ unless his findings are patently in conflict with the record evidence." Brief of FCC at 26, *Winter Park Communications v. FCC*, Nos. 85-1755, 85-1756 (D.C. Cir.). *See also Broadcast Assoc. of Colorado*, 104 FCC 2d 1619 (1986) (modifying 100 FCC 2d 616 (Rev. Bd. 1985) ("[a]bsent extrinsic evidence to the contrary, we believe that [an] ALJ's judgment . . . is entitled to great weight"); *Signal Ministries, Inc.*, 104 FCC 2d 1481, 1486 (Rev. Bd. 1986) ("[i]n the absence of patent conflicts with the record evidence, the Commission accords special deference to a presiding officer's credibility findings since the trier of fact has had a superior opportunity to observe and evaluate a witness's demeanor and to judge his/her credibility"). Despite the mass of variegated verbiage, we believe that the authorities are in consensus in holding that some real and legally recognizable deference is to be accorded to the credibility findings of a federal ALJ, unless "reversal is supported by substantial record evidence." *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1141 (D.C. Cir. 1985).

Thus, in reviewing the credibility determinations of an ALJ, any demeanor findings are also considered. *See Penasquitos Village, Inc., v. NLRB*, 565 F.2d 1074, 1078-1080 (9th Cir. 1977); *TeleSTAR*, 2 FCC Rcd at 7352, 7353 (Comm'n 1987). In fact, the ALJ here did make specific demeanor findings, holding that, "based on his observation . . . the testimony presented by Tri-State more often than not exhibited bias, partisanship, and overzealousness, without the necessary tempering of objective facts." I.D. at para. 286. As to the testimony and the comportment of Robert Melton and Jack Norris, the ALJ found that both made unsupported statements at the hearing, withheld information during discovery, refused to correct their testimony when confronted by tangible records or other impartial evidence, and were "disruptive to the orderly taking of evidence." *Id.*, at para. 306. In the end, of course:

> Credibility involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.

Carbo v. U.S., 314 F.2d 718, 749 (9th Cir. 1963).

101. After essentially a *de novo* review of this extensive record, and even regarding the witness testimony in a light nearly most favorable to Tri-State, we cannot find here the "substantial record evidence" necessary to reverse the I.D.'s adverse credibility findings and ultimate conclusions on Issue 1. *See WHW Enterprises, Inc., supra.* Instead, we must report that the preponderance of record evidence does support the I.D.'s conclusion that, contrary to Tri-State's 1974 representations to the Commission, and its parallel representations at this very licensing hearing, Robert Melton was not, in fact, stripped of all ownership-like status at the station and confined primarily to sales (and related) functions as an ordinary employee. Rather, the great weight of evidence discloses that Melton was very little involved in sales (if at all), that he evinced a

proprietary dominion over the station and its assets, that Barry Leverant's alleged position as the "new General Manager" was eyewash, and that the 1978 "sale" of 49% of Tri-State's equity, withheld in 1974, was an artifice intended to recognize *de jure* what was Melton's *de facto* interest in all along.

102. The supporting evidence is, as the Mass Media Bureau asserts, compelling to the point of conclusiveness. First, even at most favorable, neither Melton nor any of the witnesses could identify or recall much (if any) actual sales activity on the part of Robert Melton, as most of the testimony affirms exactly the opposite (*see supra* paras. 63-65). Second, Melton's unrestricted use of a king's treasury of station "trades" for his personal use (family cars, gasoline, home improvements, restaurants, travel, *etc.*) (*see supra* paras. 66-75), a *carte blanche* afforded no other Tri-State employee or *manager*, is irreconcilable with Tri-State's claim that, from 1974 to 1978, Melton held no dominion over the stations. Although Norris and Leverant have persistently avowed that Melton was accorded these extraordinary privileges because of his incalculable value to the stations, not once at hearing or in its exceptions does Tri-State even attempt to link this incalculable value to Melton's actual daily duties at the stations. It plainly does not contend that Melton's anemic sales record was the basis, and it suggests no alternative functions to substantiate Melton's exalted value. Paradoxically, in fact, Tri-State's exceptions seem to demand that nearly decisive weight be accorded to certain testimony to the effect "that Melton did not do *anything* at the stations." *See* Exceptions at 9 (emphasis added). The *non sequitur* here is manifest.

103. Third, it is clear from the record, and Tri-State does even attempt to argue otherwise (*see id.*, at 22-23), that the $114,500 paid by Melton in his 1978 "purchase" of 49% of Tri-State bore absolutely no rational relationship to the value of the two stations by that point in time, stations that were placed on the market just a few years later at nearly $7,500,000.00. Although the accountants, as well as Norris and Melton, maintain that the $114,500 price was somehow attuned to "tax considerations," the figure was admittedly arbitrary and admittedly not predicated on the financial record (or earnings potential) of the stations, the contemporaneous value of the total assets of Tri-State, the market price of comparable broadcast properties, or on any other objective index that would imply a *bona fide* business judgment (*see supra* paras. 76-85), *unless*, of course, Melton's actual role at the stations had supplied the many missing dollars with equally valuable personal service. As noted above, Tri-State never hints at the true nature or value of Melton's prior personal service to Norris or the stations. What is more, when Melton allegedly "purchased" his 49% interest in 1978, his salary was raised, *ex nihilo*, to cover most (if not all) of the cost of his acquisition.

104. But even if we were to minimize the logical implications of the foregoing indicia, the mock installation of Barry Leverant as the purported General Manager in 1974, as continued thereafter, provides irrefragable evidence of a subterfuge. Not only was Leverant devoid of broadcast management experience when offered the job, his minimal presence at the stations (and minimal renumeration) belies the claim made to the Commission in 1974 that Leverant was to be thereafter Tri-State's highest management official, and the individual that would oversee station operations so as to ensure against future rule violations. The entire notion, purveyed continuously at hearing and even now, that Leverant served "part-time" as Tri-State's supreme manager (without suggesting once who substituted for Leverant during his pervasive "part-time" absences) is as puerile as it is incriminating. For this knowing and repeated misrepresentation alone, Tri- State's conduct would be actionable.

105. Agreeing in principle with the I.D. that Tri-State did, from 1974 to 1978, conceal from the Commission the true status of Robert Melton at Tri-State, and that it did in 1978 lack candor in necessarily representing that its sale of 49% of its stock to Melton was a *bona fide* transaction that, for the first time, invested in him a proprietary interest in the licensee, we must now consider whether Tri-State's disqualification by the ALJ was legally warranted for its misrepresentations at that time and/or for its continued deceit at hearing.

106. The law is well-settled that intentional lack of candor during the course of an FCC hearing can lead to disqualification. *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982); *see also WHW Enterprises, Inc., supra* ; *TeleSTAR, supra* ; *William M. Rogers*, 92 FCC 2d 187, 199 (1982). We must here conclude that, to the extent that Tri-State's principals attempted throughout the hearing to misportray Robert Melton's role (and Barry Leverant's role) during the period 1974-1978, it lacked basic candor before the agency. Tri-State's exceptions imply the ALJ was incorrect to find, insofar as its principals have maintained their innocence during the hearing and in the pleadings, a *current* lack of candor. We disagree. Had Tri-State openly conceded here that it should have been, perhaps, more forthcoming about Melton's "special" role after 1974, or admitted at hearing that Melton was so heavily relied upon by Norris for his formidable broadcast expertise that a true severance never occurred in the manner intended, a different coloration would suffuse this record. But there was in this proceeding not the slightest *mea culpa* ; only a stonewall.

107. Adhering to traditional precedent, the Board has found unqualified several recent broadcast licensees, in part because of candorless conduct at the hearing itself. *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2137-38 (Rev. Bd. 1987); *Mid - Ohio Communications, Inc.*, 104 FCC Rcd 2d 572, 595, 598-99 (Rdv. Bd. 1987). Other applicants have suffered the same consequences. *TeleSTAR, supra*, 2 FCC Rcd at 49; *Old Time Religion Hour, Inc.*, 95 FCC 2d 713, 719 (Rev. Bd. 1983). In *Nick J. Chaconas*, 28 FCC 2d 231 (1971), *recon. denied*, 35 FCC 2d 699 (1973), *aff'd* , 486 F.2d 1314 (D.C. Cir. 1973) (Table), the Commission, finding that the licensee had violated several rules, was equally concerned that the licensee's false defenses were "adhered to throughout the hearing process," and that these represented "false statements consciously made to escape embarrasing inquiry." 28 FCC 2d at 233. The same may be said of Tri-State's candorless representations and responses at the hearing below.

108. With more direct regard to Tri-State's conduct during the 1974-1978 period, we are, as always, uneasy in adjudicating activities occurring more than a decade ago. *Cf. Seven Hills Television Co.* 2 FCC Rcd 6867 (Rev. Bd. 1988) (subsequent history omitted). The Commission has likewise recognized the very real problems in researching such conduct, *see Calhoun County Broadcasting*, 57 RR 2d 641, 644-45 (1985), and its most recent *Character Policy Statement*, 102 FCC 2d 1179, 1229 (1986), indicates that a

10-year limitation should generally apply, even in instances of a "flagrant disregard of the Commission's regulations and policies." While Tri-State liberally invokes the *Character Policy Statement* as a defense against the non-broadcast conduct encompassed in Issue 2, *see* Exceptions at 26-33, it does not specifically cite or rely upon the time limitation aspect of the *Character Policy Statement* in connection with Tri-State's and Robert Melton's conduct (Issue 1). Moreover, both the Board and the Commission, as well as the courts, have been compelled to review conduct occurring many years prior to the agency's adjudication, *see, e.g., Seven Hills* ; *KQED, Inc.*, 3 FCC Rcd 2821 (1988), and we do note that this case was triggered by competing applications filed in 1983, followed by a 1985 hearing designation, and the taking of evidence in 1986. So, even a 10-year limitation would not have excluded at least most (if not all) of the conduct at issue, which perhaps explains the absence of any specific Tri-State exception based on staleness or the *Character Policy Statement* language.

109. Having already indicated that we do not find the substantial record evidence upon which to overturn the ALJ's conclusion that Tri-State's principals lacked candor while at this hearing, we have by unavoidable implication signaled that their testimony does not forthrightly convey the objective conditions at the stations from 1974 to 1978. Tri-State's theory of the underlying case, however, may be summarized as follows: Because little (if any) witness testimony or other evidence proves that Robert Melton played an active supervisory role at the stations during the relevant time period, it is only by "assumption" that Tri-State can be considered to have disregarded its 1974 pledge to the Commission, and that such "assumptions" are an inadequate substitute for the "clear, precise and indubitable" proof requisite to a determination that it intentionally deceived the Commission. *See* Exceptions at 3-4. Although Tri-State's compact formulation would not be wholly inappropriate were this a criminal prosecution for perjury, *see id.*, at 10, its theory does not correspond to the established framework for license application and renewal adjudications at administrative agencies.

110. Initially, the standard of proof to be applied here is the "preponderance of the evidence" standard, a subject we have most recently rehearsed again in *Silver Star Communications, Inc.*, 3 FCC 2d 6342, 6348-49 (Rev. Bd. 1988) (citing *Riverside Broadcasting Company, Inc.*, 104 FCC 2d 644, 647 n. 2 (1986)). *See also Steadman v. SEC*, 450 U.S. 91 (1981). Here, citing an ALJ's decision in *Overmeyer Communications Co.*, 56 FCC 2d 918, 925 (1974), Tri-State instead asserts that, "[t]o support license disqualification for misrepresentation or lack of candor, the quality of the evidence necessary to support such a result must be 'clear, precise and indubitable'." Exceptions at 3 n.3. But Tri-State ignores what the court in *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392 (D.C. Cir. 1985), indicated at n. 6 of its decision (and as repeated by the Commission in its own *Riverside Broadcasting* at n. 2), that "the quoted ALJ opinion in *Overmeyer* was disapproved (in favor of the 'preponderance-of-the-evidence' standard) by the Review Board. *See Overmeyer Communications Co.*, 54 FCC 2d 1045, 1060 (1975)." As stated in *Riverside* (at n. 2): "The Court is correct that ordinarily the burden at hearing is satisfied by a preponderance of the evidence." That traditional standard must be applied here.

111. Next, whereas Tri-State asserts that it was subject to "an arbitrary and improper burden of proof" on Issue 1, *see* Exceptions at 3, it seems clear in context that Tri-State is (erroneously) complaining about the *standard* of proof (discussed above), and not the actual placement of the "burden." Nevertheless, this is in form and substance a license application proceeding (albeit a renewal application), and the Commission in *TeleSTAR* reiterated the general rule that, "[w]here an applicant has peculiar knowledge of operative facts concerning the alleged misconduct, it must bear the burden of proof as well as the burden of proceeding with the evidence with respect to disputed matters." 2 FCC Rcd at 7353. It is true that, on rare occasion, the evidentiary burdens have been shifted to an applicant's antagonists. *See Calhoun County Broadcasters, supra* ; *cf. Seven Hills, supra.* [9] But it does not appear in the record that Tri-State directly requested that the evidentiary burdens be lifted from its shoulders, its exceptions do not make this argument or rely upon, *Calhoun County, supra*, and any such objection is by now also waived. 47 CFR § 1.277(a). And, even had there been such an exception, this is an especially appropriate case to apply the above-quoted general rule, since the licensee had destroyed its business records (*see supra* note 8), so the facts concerning Robert Melton's true status (particularly any covert status) are primarily within the domain of Tri-State.

112. Beyond those procedural matters, our most profound disagreement with Tri-State's thesis is its postulate that no intentional misrepresentation or lack of candor has been proved, because of the record's dearth of evidence that Melton exhibited the more mundane "supervisory" prerogatives from 1974 to 1978 (*e.g.*, dispatching memoranda, personally hiring and firing, issuing policy decrees, and so forth). If viewed in those deliberately narrow terms, Tri-State might well be correct. But this licensee's deception was of a considerably different quality, and far deeper still.

113. It is true that, in contemplating the proposed 1974 assignment to Melton and Norris as equal partners, the Commission was concerned about Melton's top supervisory role prior thereto, when many FCC rule violations occurred at the stations. But in response to these concerns, Tri-State represented, as it now pleads: "Melton would be retained at the station as a salesman without any management or supervisory authority; that Norris alone would acquire 100% of Tri-State and that Barry Leverant, a Phoenix attorney, would be general manager of the stations." Exceptions at 2-3. Yet, based on those facts of record that are undisputed (or nearly so), Melton never genuinely performed as a salesman, he freely exploited valuable station assets without any supervision *as if* he were an equal owner, and he recovered his 49% equity at an artificially nominal price (with a spontaneous salary increase to absorb even *that*) only four years later. When conjoined to the incontrovertible evidence that Leverant was the General Manager in name only, it becomes glaringly clear that Tri-State's actual structure differed sharply from its 1974 representations, and that the ensuing 4-year charade fooled neither Norris, nor Melton, nor Leverant, and assuredly not the licensee's subordinate employees. Based upon the totality of record evidence, no rational inference may be drawn except that, from 1974 to 1978, Robert Melton was no less Norris' *de facto* partner than

he was slated to become in 1974, and only formally so clothed in 1978. Or, that Barry Leverant was much more than *trompe l' oeil*.

114. Though the Commission does not lightly disqualify any applicant for misrepresentation or lack of candor, *TeleSTAR*, 2 FCC Rcd at 2860, the case law and the *Character Policy Statement* are at pains to stress that the agency's demand for unalloyed candor is its *sine qua non* for licenseeship, because it is primarily upon a licensee's uninvestigated representations that this agency must routinely rely. The Commission has an exceedingly limited budget and staff, and its everyday resources even for spot-checking are miniscule compared to the enormous industries under its purview. Practically its entire system of regulatory control over the vast and vital telecommunications industry is based, of utter necessity, on a system that presupposes the honor of its regulatees, much the way the courts must largely trust in the representation of lawyers appearing before them. When that trust is ruptured, all else falls asunder, and privileges may be lost if the deceit is substantial. At the FCC, that privilege has been the license sought, or the renewal thereof. *FCC v. WOKO*, 329 U.S. 223 (1946); *RKO General Inc., supra* ; *TeleSTAR, supra* ; *KQED, Inc., supra* ; *Mid - Ohio Communications, supra* ; *West Jersey Broadcasting Co.*, 90 FCC 2d 363 (Rev. Bd. 1982); *Nick J. Chaconas, supra*. On the state of the record before us, we must hold that the ALJ's disqualification of Tri-State for licenseeship was well within the parameters of prevailing law and licensing policy.

IV. ISSUES 2 AND 3

115. Having found above that Tri-State must be considered unqualified to remain a licensee under Issue 1, we need not review the exceptions to the ALJ's adverse resolution of Issues 2 and 3. In brief, however, Issue 2 explored the facts and circumstances surrounding Jack Norris' plea of *nolo contendre* to a State of Arizona prosecution for criminal contempt, as well as a guilty plea entered in response to a state felony change of conspiracy also involving Norris. *See supra* para. 18. While the ALJ concluded that, "[t]he pleas of no contest by Jack Norris and guilty plea . . . in Arizona Superior Court exhibit that Mr. Norris was deceitful in dealing with the State Grand Jury and Arizona Attorney General," I.D. at para. 335, we find that Tri-State's fundamental dishonesty with this Commission makes it superfluous to determine whether Norris' several violations of Arizona law furnish additional grounds under the *Character Policy Statement* for disqualifying the licensee here. [10] Should further consideration be necessary or appropriate, the facts pertaining to Issue 2 are set out in the I.D. (at paras. 197-228).

116. For much the same reason, we need not dwell upon Issue 3 (the public file issue), since the questions presented thereunder pale in comparison to Issue 1. It is adequate to note that we agree with the ALJ that the preponderance of the evidence reveals that many letters complaining about licensee programming were not placed in station files, or were destroyed by station personnel. *Id.*, para. 355. Tri-State's basic defense that the record contains merely a few isolated oversights is rejected, however, based on evidence of a pattern of neglect so strong as to appear nearly willful (*e.g.*, the licensee failed to file, from 1980-1983, the very renewal term under regular review, its critically important local issues and problems lists, *id.*, para. 345). These violations additionally tend to confirm the licensee's overall unreliability, although we need not decide whether these violations were, by themselves, disqualifying.

V. OTHER MATTERS

117. With respect to separate intervention request of Tri-State witness John E. Jennings, III, it is well-settled that intervention vaguely to protect reputation is not permitted. *See e.g., WKKQ, Inc.*, 94 FCC 2d 482 (Rev. Bd. 1983). Additionally, neither Jennings nor Tri-State has demonstrated how his separate intervention "would assist the Commission in the determination of the issues in question . . . ." 47 CFR §1.223(c); *see also Listeners Guild, Inc. v. FCC*, 813 F.2d 465, 470 (D.C. Cir. 1987)("broad, undifferentiated desire to participate does not satisfy the strictures of the intervention rule"). Our central focus in a renewal case is on the licensee entity, not a witness, *Seven Hills Television Company, supra*, 2 FCC at 6889, and this unsupported intervention request will be denied.

118. Finally, the Board may not entertain Tri-State's argument that the ALJ erred in refusing to add a financial issue against G&C (or a collateral misrepresentation issue). This matter was discussed in the *HDO*, and neither the ALJ nor the Board may second-guess a matter fully considered and resolved in a hearing designation order. *Atlantic Broadcasting Co.*, 5 FCC 2d 717, 720 (1966); *Fidelity Radio, Inc.*, 1 FCC 2d 661, 662 (1965).

VI. CONCLUSIONS

119. We must affirm the I.D. insofar as it finds Tri-State basically unqualified under Issue 1. As we have indicated, the preponderance of record evidence supports the I.D. in this regard. Consequently, because only basically qualified applicants are entitled to comparative credit, we do not consider whether Tri-State's programming record would otherwise support a "renewal expectancy" under the comparative issue. Moreover, the misconduct on this record could not be mitigated by such a favorable record in any event. As discussed at some length in *KQED, Inc., supra*, 3 FCC Rcd at 2607, the Commission's recent precedent, and its *Character Policy Statement*, 102 FCC 2d at 1211 n. 79, make clear that "in cases of misrepresentation we are not required to consider the station's past programming performance." *See also Continental Broadcasting, Inc., v. FCC*, 439 F.2d 580, 583-584 (D.C. Cir. 1971), *cert. denied*, 403 U.S. 905 (1971). We find no reason to alter or avoid that policy here.

120. With Tri-State disqualified, and with G&C found fully qualified to be a Commission licensee, the final result of the I.D. must otherwise be affirmed. Although it is always regrettable to witness a regulatee suffer a multimillion dollar loss when its license cannot be legally renewed, broadcast licensees have been forewarned for decades that the Commission's demand for candor is not an edict with which to trifle. While many licensee deceptions, no doubt, go undetected and unpunished, the price of revelation is dear. For all the good that Tri-State might have done in the future in its community, it has broken the Commission's cardinal regulatory cannon, a foolish and prodigal error we earnestly wish it had avoided.

121. ACCORDINGLY, IT IS ORDERED, That the applications of Tri-State Broadcasting Company, Inc. for renewal of license for KUKQ(AM) (File No. BR-830609UH) and KUPD-FM (File No. BRH-830609WZ),

Tempe, Arizona ARE DENIED; and the applications of Jack F. Grimm, Jackie B. Grimm and Ruth G. Clifford d/b/a/ Grimm & Clifford for a construction permit for the frequencies occupied by KUPD-FM (File No. BPH-830831AI), and KUKQ(AM)(File No. BP-830831AB) ARE GRANTED; and

122. IT IS FURTHER ORDERED, That the Motion to Supplement the Record on Appeal; Motion for Leave to File Reply; Appeal; and Supplement to and/or Conditional Withdrawal of Appeal, all filed by Tri-State Broadcasting Company, Inc. on October 31, 1988, November 16, 1988, April 11, 1989 and May 1, 1989, respectively, ARE DISMISSED as moot; and, that the Petition to Accept Petition of John E. Jennings, III, to the Review Board as Motion to Intervene and Exceptions to Initial Decision, filed November 8, 1988 by Tri-State Broadcasting Company, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] These multiple pleadings include: (a) Motion to Supplement the Record on Appeal, filed October 31, 1988 by Tri-State; (b) Petition to Accept Petition of John E. Jennings, III, to the Review Board as Motion to Intervene and Exceptions to Initial Decision, filed November 8, 1988 by Tri-State; (c) Formal Petition submitted by John E. Jennings, III, filed November 8, 1988 by Jennings; (d) Oppositions to (a), filed November 9, 1988 by the Mass Media Bureau and Grimm & Clifford, respectively; (e) Motion for Leave to File a Reply to (d), filed November 16, 1988 by Tri-State; (f) Consolidated Reply to Oppositions to Motion to Supplement the Record on Appeal, filed November 16, 1988; (g) Opposition to (b), filed November 17, 1988 by Grimm & Clifford; (h) Opposition to (b), filed November 28, 1988 by the Mass Media Bureau; (i) Reply to Opposition of Mass Media Bureau to Petition Concerning John Jennings; (j) Appeal, filed April 11, 1989 by Tri-State; (k) Opposition to (j), filed April 18, 1989 by Grimm & Clifford; (l) Opposition to (j), filed April 20, 1989 by the Mass Media Bureau; (m) Supplements to and/or Conditional Withdrawal of Appeal, filed May 1, 1989 by Tri-State; and (n) Comments on Supplemental to and/or Conditional Withdrawal of Appeal, filed May 10, 1989 by Grimm & Clifford.

[2] With respect to these questions, Melton testified at hearing that he did not know whether he had received this inquiry from the Commission; but, if there had been a response, he conceded, it would have been discussed with him. Tr. 220-24. When prodded, Melton did recall that an attorney from its communications law firm flew to Tempe to discuss the problem. Thereafter, a response to the Commission's inquiry was filed on November 18, 1974, reducing the amount of news the stations carried from the 3.7% initially claimed to 3.6%; public affairs from 0.4% initially claimed to 0%, and "other programming" from 0.3% initially claimed to 0% during the composite week. Tri-State Exh. 9, Att. 1-E, at 161-62. Melton could not explain, despite the fact that he was in charge of the stations, how the incorrect numbers came to be initially reported. While Melton maintained that he did not know how the errors resulted, Tri-State averred in its renewal applications that four alternative "composite week" dates "were required solely with reference to the transmitter operating logs and as a result of the disappearance of such logs from the station's files." (As noted, the Commission's Field Operations Bureau, in July 1974, cited the stations for not maintaining and retaining logs; indeed, the Bureau's inspectors believed that the logs never existed. G&C Exhs. E-63, E-70).

[3] The ALJ found that when Melton was a salesperson in 1975-76, and earning under $30,000 in wages, he had a home built in Paradise Valley, Arizona. Tr. 380. G&C Exhs. E-7 and E-8. Melton testified that land in Paradise Valley is "very expensive" and that he spent $250,000 building the house. Tr. 380. To pay for the house, he borrowed money from Valley National Bank of Arizona, based upon a financial statement dated January 4, 1975. On that statement he certified that his income from the stations was $36,000 and that he received, in addition, $7,000 in "trades." His 1974 federal tax return reflects total wages of $30,000, and trade income of $1,360. G&C Exh. E-5, at 1 and 5. In addition, the loan application referred to "Pending buy-sell agreement Ins." in the amount of $500,000. G&C Exh. E-19, at 5. Melton maintained at hearing that he did not know what that "buy-sell agreement" referred to, and specifically denied that he ever had a "buy-sell agreement" with Jack Norris for KUPD. Tr. 384-88. The January 14, 1975 loan application to the bank also listed Melton's net worth as $129,000. However, some nineteen months later, on August 1, 1977, when Melton submitted another application to Valley National Bank, his net worth increased by nearly $90,000 to $217,800. G&C Exh. E-19, at 2 and 4. He could not explain the increase, since his only income was his station salary, and the income from the equipment he and Norris leased to Tri-State. Tr. 385-88. Melton did affirm that he knew it was a crime to submit false information to a bank to obtain a loan. Tr. 384.

[4] In early November 1977, Norris and Melton began negotiations to acquire a building and associated land at 2021 East Thomas Road in Phoenix. On November 25, 1977, they acquired the property with each of them holding a one-half interest. Tr. 715-16, 1635, 1637. G&C Exh. E-34. Before concluding the transaction, Norris arranged financing with Valley National Bank, conducted an appraisal of the property, and worked with an architect on remodeling the building. Melton and Norris signed for the loan. Tr. 1638. Tri-State moved its business offices there in June 1978. Tr. 711-12. Following the purchase of this real property, Melton and Norris entered into the MEL-NOR Partnership Agreement. The agreement, which was not signed until February 1, 1978, provided in principal part that each partner would contribute $250 in services, or cash, or property to start the partnership. They contributed their interest in the real property and the broadcast equipment leased to Tri-State. G&C Exh. B-28. The partners were each entitled to 50% of the profits and equal rights to manage the property.

[5] The ALJ determined that, as a continuing demonstration of Robert Melton's refusal to adhere to directives of legal authorities, he "violated the proceedings sequestration order by discussing the testimony he gave with his accountant, Edward Espinoza, before Mr. Espinoza testified." I.D., para. 287. In its Exceptions (at 26), Tri-State claims that "without . . . record citation [the ALJ] condemns Melton for *allegedly* violating the sequestration requirements . . . ." (Emphasis added). However, Tri-State then *admits* that Melton did so violate the ALJ's sequestration order, but claims that the actual event was a minor matter in which Melton, speaking to Ed Espinoza shortly before Espinoza was due to testify, expressed some strong emotions over the nature of the examination that had been conducted regarding Melton's personal relationship with Norma Hein.

[6] Espinoza was asked why, based upon its preliminary calculations, he claims to have regarded Tri-State as having a negative "book value" of $285,781 in 1976, but a corresponding positive value of $106,000 year later. Espinoza replied that he had later removed Norris' debt to Grimm & Clifford, and considered Tri-State's 1977 earnings, thus causing a $390,000 increase in "book value" in one year. Tr. 1276. But Espinoza could not explain just where he got the figure $450,000 as the "value of license," although a handwritten note to that effect attended his calculations. Tr. 1277.

[7] The ALJ weighed the testimony of six former station employees called by G&C, characterized here by Tri-State as "secretaries and clerical personnel," as well as eight current/former employees of Tri-State, in reaching his conclusions. However, as discussed in text at paras. 99-100, our own review of the record buttresses the ALJ's credibility and demeanor conclusions, and we further note that, of the six witnesses called by G&C, three were, in fact, management/supervisory level employees. (Fabre was traffic director; Goodman was News Director; and Esch was an engineer.) As former employees, they had no motivation to dissemble, and would not benefit in any manner by the outcome of this proceeding. Conversely, the witnesses called by Tri-State had a clear interest in a favorable outcome here. *See e.g., Old Time Religion Hour, Inc.*, 95 FCC 2d 713, 722-723 (Rev. Bd. 1983); *Country Broadcasting Company*, 93 FCC 2d 83, 88-89 (Rev. Bd. 1983). At the time of hearing, all Tri-State witnesses were either current employees, suppliers of services to Tri-State, or relatives or "close" friends of Robert Melton. (Lloyd Melton is Robert Melton's brother; Hein has been a close associate of Robert Melton for some years; Croft and Shumway were highly paid salesmen; Wallace had, after he left Tri-State's employ, sold the station his "radio tracking" index, and was paid $2,000 to contact potential witnesses favorable to Tri-State; and Jones had sold technical equipment used by the stations to Tri-State after he left his employment).

[8] Tri-State excepts to the ALJ's findings that the destruction of most of its pre-1980 business records was a conscious attempt to destroy evidence. *See* I.D., paras. 130-133. It claims that no evidence supports these findings, and that these apparently reflect the ALJ's inferences drawn from Norris' plea of *nolo contendere* to a state criminal charge that Norris was complicitous in the 1976 destruction of records belonging to a non-broadcast entity partially owned by Norris (Marston's) so as to subvert a grant jury subpoena, *see* I.D., paras. 200-219, a plea that is, in part, encompassed in our Issue 2. Because we find Tri-State disqualified on other grounds of dishonesty, and inasmuch as we do not delve into Issue 2 for that same reason (*see infra* para. 115 of the text), we need not resolve this dispute. Accordingly, we do not affirm the I.D.'s adverse conclusions at paras. 286 and 328.

[9] Relying primarily on *Calhoun County*, the Board in *Seven Hills* did respond to that renewal applicant's specific exception to the ALJ's refusal to shift the burden of proof, *see* 2 FCC Rcd at 6873, although out of an abundance of caution the Board *also* regarded the evidence *as if* the burdens had been on the renewal applicant. *See id.*, at 6886. However, in later approving a settlement in *Seven Hills*, the Commission (by delegated authority) found it unnecessary to resolve the burden of proof dispute, declaring it moot. *Order*, FCC 89I-32, released May 1, 1989 (OGC).

[10] With respect to Norris' *nolo contendre* plea, the Commission has made clear in its *Character Policy Statement* (102 FCC 2d at 1205; footnotes omitted):

> We will not take cognizance of non-FCC misconduct involving alleged criminally fraudulent misrepresentations, alleged criminal activity and antitrust or anticompetitive misconduct unless it is adjudicated. In this regard there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations. Such adjudications will be considered for character purposes during the pendency of an appeal.

Further (*id.*, at n. 64):

> With regard to convictions based on a plea of *nolo contendere*, however, we are of the view that such convictions could be considered relevant for the purposes of our character examination. *See U. S. v. Williams*, 642 F.2d 136 (5th Cir. 1981).

SEPARATE STATEMENT OF BOARD CHAIRMAN MARINO DUBITANTE

This case was, at the outset, flawed by undue delay before the critical issue was even raised. That flaw was compounded by an Initial Decision which failed to recognize the difficulties presented when a licensee is asked to reconstruct events that took place a decade or more before the issue was belatedly raised by a former adversary.

In *Hush - A - Phone* v. *FCC*, 238 F.2d 266, 269 n.9 (D.C. Cir. 1956), the Court warned about the unfairness which results "when the Commission's adjudicatory process bogs down." (Less than 7 year delay.) That warning has been repeated in numerous other cases. *See, e. g., Lebanon Valley Radio, Inc.* v *FCC*, 503 F.2d 196, 201 (D.C. 1974) ("proceed expeditiously so that this proceeding may reach a final conclusion before it enters its second decade"); *Millar* v. *FCC*, 707 F.2d 1530, 1544 n.18 (D.C. Cir. 1983)("17 1/2 years since the underlying conduct took place"). *See also* cases cited in note 1, Separate Statement, *Intercontinental Radio, Inc.* 98 FCC 2d 608, 648-49 (Rev. Bd. 1984).

For me, the critical issue would have been difficult to decide if the Bureau had contemporaneously monitored Melton's activities from 1974 to 1977, and conducted a speedy hearing in 1978 to determine whether the licensee had complied with earlier understandings with the staff. *See Decision*, paras. 12-13; Tr. of Oral Argument, pp. 4629, 4634-4638. Several license terms passed, and the issue was finally raised in January 1986, by Grimm and Clifford, the station's former owners and Melton's old adversaries in 1970 civil litigation. *See Decision*, paras. 4-6. Grimm and Clifford may have waited for several license terms to pass while continuing to collect the proceeds of a civil law suit settled in 1973, *See Decision*, para. 78.

If these adversaries had sought to resume their legal vendetta in the civil courts, they would have met traditional common law barriers to stale claims. In the more malleable administrative process the issues were enlarged. Although the facts in dispute were, at that time, nine to twelve years old, the burdens of proceeding with the introduction of the evidence and the ultimate burdens of

proof were not placed upon the party requesting the issue, as the Commission had mandated a year before in *Calhoun County B / Casting Co.*, 57 RR 2d 641 (1985).

In *Calhoun*, the Commission held that when a licensee must defend itself "against allegations of misconduct dating back approximately 10 to 15 years . . . in accordance with concepts of basic fairness [it would] require the party making serious charges to prove their truth." 57 RR 2d at 645 para. 12. Recognizing its departure from past practice, the Commission noted "in those limited number of cases where age of serious allegations is a critical factor, we now believe that basic fairness concepts are better served if petitioners are assigned both evidentiary burdens." 57 RR 2d at 645 n. 6.

Accordingly, the Commission may wish to consider whether both burdens should have been placed upon Grimm and Clifford in accordance with the *Calhoun* case. It may also wish to consider the suggestion of former Commissioner Lee Loevinger, and Circuit Judge Leventhal in *Sea Island Broadcasting Co.* v. *FCC*,627 F.2d 240, 244 (D.C. Cir. 1980) that in these troublesome misrepresentation cases, where a broadcast license is in jeopardy, the Commission require the production of clear and convincing evidence. *See* Separate Statement, *Catoctin Broadcasting Co.*, 2 FCC Rcd 2126, 2139 (Rev. Bd. 1987). Imposition of the heavier burdens upon the petitioner seems appropriate here where the petitioner, a former adversary, permitted many years to pass before raising the matter before the Commission.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-348

In the Matter of

Amendment of Section 73.202(b), RM-6717
Table of Allotments,
FM Broadcast Stations.
(Mirando City, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 16, 1990; Released: March 2, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 6212 (1989), issued at the request of Alderete Communications (petitioner), permittee of Station KZZQ(FM), Channel 265A at Mirando City, Texas, proposing the substitution of Channel 263C2 for Channel 265A at Mirando City. The *Notice* also proposed the modification of Station KZZQ(FM)'s construction permit to specify operation on the higher powered channel. Petitioner filed supporting comments reaffirming its interest in its station's upgrade.

2. Based on the information before us, we believe the public interest would be served by allotting Channel 263C2 at Mirando City, providing that community with expanded FM service. Channel 263C2 can be allotted to Mirando City in compliance with the Commission's minimum distance separation requirements at the site specified by the petitioner which is located 21.2 kilometers (13.2 miles) southwest of the city.[1] Concurrence by the Mexican government has been obtained for the allotment since Mirando City is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

3. Therefore, as requested, we are modifying Station KZZQ(FM)'s construction permit to specify operation on the higher powered channel, in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 16, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Mirando City, Texas	263C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the permit of Alderete Communications for Station KZZQ(FM), Mirando City, IS MODIFIED, to specify operation on Channel 263C2 in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are 27-21-35 and 99-11-46. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

FLORENCE METRONET, INC. File No. 01884-CL-MP-88

For a major modification of KNKA 628 operating on frequency block A in the Domestic Public Cellular Radio Telecommunications Service in Florence, S.C., Market No. 264

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 1990; Released: March 2, 1990

By the Chief, Mobile Services Division:

1. Florence Metronet, Inc. (FMI) is the Block A licensee in the Florence, South Carolina MSA. FMI has filed an application for an additional cell (Cell Site 2) in its MSA. FMI's proposed 39 dBu contours extend into portions of Williamsburg, Clarendon, and Sumter Counties, which are all part of South Carolina RSA 6 - Market 630. Farmer's Telephone Cooperative (FTC), an applicant for the Block B license in South Carolina RSA 6, has filed a Petition to Deny. FMI has filed a responsive pleading.

I. PARTIES' CONTENTIONS

2. In its petition, FTC argues that FMI's extension into the RSA is greater than *de minimis*. FTC calculates that the extension of Cell Site 2 beyond the MSA is 21.9% of the area covered by the cell, and that the proposed 39 dBu contour intrudes up to 6 miles into the RSA. FTC is concerned with the adverse economic effects to its system which could occur if potential subscribers within its RSA purchased cellular service from FMI. FTC argues that FMI has alternative engineering techniques available to it which would minimize the extensions, and it offers two alternative proposals to FMI, each of which would reduce the size of the Cell Site 2 contour.

3. FTC's first alternative maintains the antenna radiation center at the 405 foot level and employs a directional antenna of different pattern characteristics than that proposed by FMI. FTC's second alternative reduces the antenna radiation center height to 250 feet and uses the same antenna as shown in alternative one to achieve a similar coverage result. Both alternatives reduce the dimensions of the 39 dBu contour but do not eliminate the contour extension over the MSA border.

4. In opposition, FMI argues that its proposed Cell Site 2 is justified because of the irregular shape of the MSA, the difficulty of signal penetration in areas heavily wooded with evergreens, and the need to reach population centers and highways near the MSA border. It argues that the extensions are *de minimis*. It states that the configuration of the cell clearly is designed to cover the irregular MSA border, as well as towns and highways inside the MSA. FMI notes that in *Metro Mobile CTS of Charlotte, Inc.*, 2 FCC Rcd. 3929 (Mob. Serv. Div. 1987), and in *Alltel Cellular Associates of the Carolinas*, 61 Rad. Reg. 2d (P&F) 225 (Com. Car. Car. 1986), the staff, pursuant to delegated authority, denied large cell extensions which were found to have been designed to reach areas outside the MSA. FMI distinguishes these cases from its situation because, it argues, its cell is designed to reach areas inside the MSA. FMI argues that the Commission does not base its determination on whether a cell site extension is *de minimis* on one rigid rule, but rather looks to factors such as the size of the geographical area covered, the shape of the boundaries, engineering limitations, avoidance of interference conflicts and public interest concerns, citing *Saco River Cellular Telephone Company*, 62 Rad. Reg. 2d (P&F) 999, 1000 (Mob. Serv. Div. 1987). FMI argues, in addition, that the area in which proposed Cell Site 2 is located has tall, dense pine forests, which severely reduce signal propagation from the level estimated through a Carey analysis. Finally, FMI argues that it has already directionalized its antenna to minimize extension of the 39 dBu contour, and there is no acceptable system design alternative to the proposal in its instant application. In addition, FMI offers an alternative propagation study taking into account the foliage found in the MSA border area which shows that the estimated signal propagation outside the MSA border is negligible.

II. DISCUSSION

5. A proposed 39 dBu contour extension outside the MSA may be acceptable if it does not enter into a central MSA, if the applicant has justified the extension in its application, and if the extension is *de minimis*.[1] Whether or not an extension is *de minimis* depends upon such factors as the percentage size of the extension relative to the total size of the MSA,[2] whether the extension is the by-product of a system designed to cover areas inside the MSA rather than a system designed to reach areas outside the MSA, [3] and whether the border of the MSA in the vicinity of the 39 dBu contour extension is irregular in shape.[4]

6. The extensions proposed by FMI do not enter into a central MSA, nor do they cover population centers or major highways in FTC's neighboring RSA. Although FTC argues that it will potentially be economically harmed, the lack of population centers or major highways within FMI's extension area tends to mitigate the probability that RSA residents will subscribe to FMI's service rather than FTC's. Moreover, FTC did not identify any areas in the overlap area with specificity from which potential cellular subscribers might be lured away.

7. FMI's justification for its proposed 39 dBu contour extension includes the statement that the

> proposed 39 dBu contours have been designed to provide service only within the . . . MSA . . . . Any extensions of the 39 dBu contours outside of the MSA are the minimum necessary to ensure adequate cellular service to important population centers, business areas, military facilities, and/or highways within the MSA and are minor. . . .

> Because the irregularity of the MSA and the importance of cellular coverage in population centers and highways near MSA boundary the extensions . . . outside the MSA boundary are unavoidable. It is impossible to provide adequate cellular coverage within the MSA without the minor extensions . . . .

The explanations submitted by FMI have been recognized in the past as supporting extensions of the 39 dBu contours outside an MSA. *See* notes 2, 3, and 4, *supra*.

8. We turn next to a consideration of whether or not the size of the contour extensions are acceptable under the *de minimis* standard. The fundamental reasons behind the extensions proposed by FMI appear to be, first, demand for service in an area adjacent to an irregular boundary line of the MSA and second, the dense foliage in the area. First, we note that the extension area encompasses a highway leading up to a city located within the MSA, over which FMI indicates its customers require service. In contrast to the stated need for service within the MSA, the extension area outside the MSA does not cover any significant population areas. The MSA boundary separating Florence from FTC's telephone service area is clearly of an irregular shape. Second, the dense pine foliage in the MSA will likely prevent the radio signal from extending as far as estimated by the Carey estimate. The alternative propagation estimate offered by FMI takes into account the reduction in coverage due to foliage. The alternative estimate shows virtually no extension of coverage outside the MSA boundary. In addition, the antenna is directionalized to minimize signal strength along the radials extending towards FTC's RSA area. Thus, we do not find, as FTC argues, that the cell was designed to reach areas outside the RSA.[5] The extension is clearly the by-product of a system designed to serve populated areas inside the MSA.[6]

9. Accordingly, we find that FMI has met all the criteria for justifying a 39 dBu contour extension, and we will grant its major modification application herein.

III. ORDERING PARAGRAPHS

10. WHEREFORE, IT IS HEREBY ORDERED that the application of Florence Metronet, Inc., File No. 01884-CL-MP-88, IS GRANTED. This authorization does not include the right to any interference protection in any areas outside the Florence, South Carolina, MSA and is conditioned on coordinating with the current and future co-channel licensees in the area outside the MSA. The licensee herein is put on notice that in the event current or future MSA/RSA licensees encounter interference from any extensions, the licensee herein will have to change frequencies in those cells or pull back its 39 dBu contours to eliminate any interference due to the extension.

11. IT IS FURTHER ORDERED that the Petition to Deny filed by Farmer's Telephone Cooperative IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Section 22.903(a) states in pertinent part:

> No CGSA . . . may extend beyond the boundaries of the MSA . . . except where any such extensions are *de minimis* and do not include areas within another central MSA . . .

See also Procedures Update, 52 Rad. Reg. 2d (P&F) 725, 726 (Public Notice November 1, 1982), *aff'd, Cellular Radio Service*, 56 Rad. Reg. 2d (P&F) 1583 (1984):

> . . . . Minor overlap of 39 dBu contours. . . into another central SMSA will not render an application defective, provided that the application includes a specific explanation of why it was necessary to engineer the particular cell(s) such that the 39 dBu contours could not be kept entirely within the SMSA (or NECMA). . . .

[2] *Saco River Cellular Telephone Company, supra.*

[3] *Metro Mobile CTS of Charlotte, Inc., supra; Alltell Cellular Associates of the Carolinas, supra.*

[4] *Metroplex Telephone Company*, 2 FCC Rcd 7301 (Mob. Serv. Div. 1987).

[5] Additionally, we find that the alternatives to FMI's proposal suggested by FTC are not sufficiently detailed to enable us to determine whether FMI's service requirements could be accomplished without the grant of the waiver request.

[6] The 39 dBu contour extension as a percentage of total MSA area (pursuant to Carey contour estimates) is 11.4%. This amount of overlap is not generally considered *de minimis*. However, as discussed in paragraph 5, *supra*, a variety of factors are taken into account to determine whether 39 dBu contour extensions are acceptable. In this case the additional factors weigh in favor of our finding that the contour extensions are *de minimis*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Waiver of

Pass Word, Inc. MW-5
1303 W. First Avenue
Suite 200
Spokane, Washington 99204

For a Waiver of the Rules to Provide
Private Carrier Paging Service to an
Agency of the Federal Government

ORDER

Adopted: February 26, 1990; Released: March 2, 1990

By the Chief, Private Radio Bureau:

I. INTRODUCTION

1. On July 21, 1989, Courtesy Communications, Inc. (Courtesy), a radio common carrier serving the Spokane, Washington area, filed a Petition for Reconsideration of an Order,[1] released June 19, 1989, that conditionally granted Pass Word, Inc. (Pass Word) a waiver of Sections 90.75 and 90.179 of the Commission's Rules, 47 C.F.R. §§ 90.75 and 90.179.[2] These rule sections provide, in essence, that Business Radio Service private carrier paging licensees [3] may provide service only to Business Radio Service eligibles.[4] The subject waiver permits Pass Word, a licensee of several Business Radio private carrier paging systems operating on 152.480 MHz in the Spokane, Washington area, to provide paging service to the Drug Enforcement Administration (DEA), an agency of the federal government. Also under consideration are Pass Word's August 2, 1989, opposition to Courtesy's reconsideration request and Courtesy's August 14, 1989, reply.

II. BACKGROUND

2. The Bureau's waiver decision was based on information furnished by Pass Word that included a statement from a DEA official[5] indicating that the frequencies dedicated for DEA use could easily be intercepted and were not suitable for its law enforcement needs. This official requested authority to operate on a business channel in appropriate instances to more effectively conceal communications related to drug enforcement activities. Pass Word indicated that local common carrier paging systems could not provide DEA with an acceptable alternative because these systems do not have the coverage or the digital signalling required for maximum security.

3. In our waiver Order, we noted that the Commission has initiated a rule making proceeding in PR Docket No. 89-45[6] that proposes, *inter alia*, to expand the eligibility criteria for end-users of private land mobile facilities by allowing Business Radio Service licensees, such as Pass Word, to provide paging service to all Part 90 eligibles, individuals, and the federal government. We stated that although we do not ordinarily favorably entertain waiver requests of a Commission Rule that is the subject of a pending rule making proceeding, a waiver in this instance would assist DEA in carrying out its drug enforcement activities.[7] We conditioned the waiver on the outcome of the rule making and emphasized that our action in this matter would not prejudge or otherwise prejudice the pending proceeding.[8]

III. THE PLEADINGS

4. Courtesy argues that Pass Word's waiver request should have been held in abeyance pending the outcome of the Commission's rule making concerning the proposed inclusion of federal agencies as eligible paging end-users in the private radio services. Courtesy maintains that the Bureau's action has prejudged the Commission's rule making decision.

5. Additionally, Courtesy asserts that DEA does have common carrier alternatives under the existing rules that negate the need for a rule waiver. A statement from its President, John E. Sonneland, asserts that Courtesy can provide DEA with common carrier service in the Spokane area at lower rates and with comparable coverage to that offered by Pass Word. Courtesy also contends that common carrier service, available on an exclusive basis, would provide DEA with greater security than the shared use of Pass Word's private paging facility.

6. Pass Word opposes Courtesy's reconsideration petition as procedurally defective because it is not in accord with the standing provisions of Section 1.106 of the Rules, 47 C.F.R. § 1.106. Pass Word argues that Courtesy is neither a party to this waiver proceeding nor an entity whose interests are adversely affected by the Bureau's action. Pass Word also submits that Courtesy will suffer no economic injury as a result of DEA's use of Pass Word's private radio facility because Courtesy did not previously render common carrier service to DEA. Pass Word further emphasizes that the subject waiver does not preclude Courtesy from serving DEA on its common carrier facility if DEA desires such service.

7. In addition to its procedural objection, Pass Word argues that Courtesy's claim that the waiver prejudges the Commission's rule making proceeding is without merit. Pass Word submits that Courtesy ignores the fact that the waiver is expressly conditioned on the outcome of the rule making.

8. In its reply, Courtesy, citing Section 0.331(a)(3) of the Commission's Rules, 47 C.F.R. § 0.331(a)(3), contends that the Bureau lacked the authority to grant the instant waiver because expanding the class of eligible private carrier end-users to include the federal government involves new or novel arguments and a change in Commission policy that must be referred to the Commission *en banc*.

IV. DISCUSSION

9. Courtesy has failed to present an adequate basis for denying the waiver. Our waiver decision was based on information provided by a DEA official that it had no reasonable alternatives to obtain suitable communications service under the Commission's existing rules.[9] Specifi-

cally, the information submitted indicated that common carrier service was not a viable solution. Courtesy's assertion that it can provide DEA with superior common carrier service is, therefore, not supported by the record as DEA has selected Pass Word's private carrier paging system as the one that can meet its communications requirements with regard to coverage and security.

10. Nor are we persuaded by Courtesy's suggestion that we should have held Pass Word's request to provide service to DEA in abeyance in view of the importance of DEA's enforcement activities. As indicated in our Order, our decision to permit DEA, a unit of the Department of Justice, to operate on Pass Word's private carrier paging facility is consistent with Section 873(b) of the Controlled Substances Act, 21 U.S.C. § 873(b), that provides that it is the duty of every federal agency, upon the request of the Attorney General of the United States, to provide assistance where drug abuse control and enforcement efforts are concerned.

11. Courtesy's procedural argument that we lacked the authority to grant the subject waiver because of the "novelty" of the issue concerning the expansion of private carrier end-user eligibility to include the federal government is also unconvincing. The Commission recently decided to expand Specialized Mobile Radio (SMR) end-user eligibility in the private radio services to include the federal government.[10] Moreover, even if this were an issue sufficiently novel to require Commission action, our waiver grant is expressly conditioned on the Commission's resolution of this question in its pending rule making proceeding.[11] Thus, the rule waiver granted to Pass Word was consistent with the provisions Section 0.131(a) of the Rules[12] that authorize the Private Radio Bureau to act on waiver requests.[13]

V. CONCLUSION

12. Accordingly, IT IS ORDERED that Courtesy's Petition for Reconsideration of the grant of Pass Word's request for waiver of Sections 90.75 and 90.179 of the Rules to allow it to provide private carrier paging service to the Drug Enforcement Administration IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] 4 FCC Rcd 4977 (1989).

[2] The waiver was granted subject to the outcome of the Commission's proceeding that proposes to expand the class of eligible private carrier paging end-users to include the federal government. *See* Notice of Proposed Rule Making (Notice), PR Docket No. 89-45, FCC No. 89-70, 4 FCC Rcd 2589, (1989).

[3] A private carrier paging licensee is an entity licensed in the Private Land Mobile Radio Service that is authorized to provide communications service to other private service eligibles on a commercial basis. 47 C.F.R. § 90.7.

[4] Any individual or entity primarily engaged in the operation of a commercial activity is eligible for an authorization in the Business Radio Service. Agencies of the federal government are not eligible in the Business Radio Service. 47 C.F.R. § 90.75.

[5] Letter from Gregory K. Williams, DEA Resident in Charge, to Pass Word, Inc. (Aug. 30, 1988).

[6] Notice of Proposed Rule Making, PR Docket No. 89-45, *supra*.

[7] 4 FCC Rcd at 4978, n.9.

[8] *Id.*

[9] *See* 47 C.F.R. §§ 1.3 and 90.151.

[10] *See* Report and Order, Amendment of Part 90, Subparts M and S of the Commission's Rules, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988), *aff'd* Memorandum Opinion and Order, PR Docket No. 86-404, 4 FCC Rcd 356 (1989).

[11] PR Docket No. 89-45, *supra*.

[12] 47 C.F.R. § 0.131(a).

[13] As we have chosen to deny Courtesy's petition on the merits, we are not addressing Pass Word's assertion that Courtesy lacks standing to seek reconsideration in this instance.

Before the
Federal Communications Commission
Washington, D.C. 20554

GTE SPACENET CORPORATION	File Nos. 1842-DSS-ML-89
Application for Modification of License for the GSTAR III Domestic-Fixed Satellite	
and	
Application for Temporary Orbital Assignment for GSTAR III	1843-DSS-MISC-89

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 1990; Released: March 2, 1990

By the Chief, Common Carrier Bureau:

1. GTE Spacenet Corporation (GTE Spacenet) seeks authority to modify the authorization for its GSTAR III satellite[1] to operate without north-south stationkeeping (*i.e.*, inclined orbit operation) and to reassign temporarily the satellite from 64^0 W.L. to 93^0 W.L. These applications were on public notice, and no oppositions or comments were filed. For the reasons discussed below, these requests are granted.

2. GSTAR III was launched in September 1988. An operational malfunction resulted in GSTAR III achieving an elliptical, rather than a geostationary, orbit. Over a one year period, GTE Spacenet maneuvered the spacecraft into position to achieve proper orbit. This, however, used a substantial amount of the satellite's fuel. GTE Spacenet states that this expenditure of fuel significantly reduced GSTAR III's potential useful life from approximately ten years to perhaps as little as six months.[2]

3. GTE Spacenet avers that if the spacecraft does not have to use fuel to maintain north-south stationkeeping while the satellite is in geostationary orbit, GSTAR III's potential useful life would increase to 3.5-4.5 years. GTE Spacenet asserts that the satellite's inclination excursion will not exceed five degrees. [3] that it will not cause unacceptable interference as a result of inclined orbit operation to satellites operating adjacent to the 93^0 W.L. orbit location, and that it will maintain a point of contact who can immediately turn off any interfering GSTAR III transmission. GTE Spacenet acknowledges that fixed service offerings on GSTAR III will be limited to customers who use large tracking antennas or who use satellite feeds for relatively short time periods. GSTAR III also carries two payloads for Radiodetermination Satellite Service (RDSS) for GTE Spacenet's customer Geostar Positioning Service (Geostar)[4], and GTE Spacenet avers that the public would benefit by the availability of RDSS for the lengthened lifetime of the satellite.

4. GSTAR III is currently assigned to the 64^0 W.L. orbital location.[5] GTE Spacenet requests temporary assignment of 93^0 W.L. for GSTAR III because this location will not be occupied by another 12/14 GHz satellite for several years.[6] GTE Spacenet states that the 93^0 W.L. orbital location allows for maximum utilization of both FSS and RDSS operations without disrupting the operations of other satellite operators. GTE Spacenet recognizes, however, that it will have to cease operations at 93^0 W.L. when the location is to be occupied by the satellite assigned there on a regular basis even if GSTAR III has not exhausted its operational capability.

Discussion

5. The operational malfunction that resulted in GSTAR III's failure to achieve geostationary orbit shortly after launch was an unfortunate occurrence that threatened to deprive the public of a valuable telecommunications resource. Due to GTE Spacenet's ability to maneuver the satellite into proper orbit, however, the satellite's potential capability to provide RDSS and fixed-satellite services, albeit limited in scope and duration, was preserved. In an analogous case, the Bureau previously recognized the public benefit of lengthening the useful lifetime of older satellites with inclined orbit operation after those satellites had been efficiently operated during the majority of their nominal lifetimes.[7] Under the unique circumstances in this case, there is no reason to prevent GTE Spacenet from operating GSTAR III with an inclination excursion up to five degrees.[8] The satellite's service potential will be lengthened and the public will benefit from the fixed-satellite and radiodetermination satellite services that will be provided. Also, GTE Spacenet will realize some return on its investment. GTE Spacenet has been operating GSTAR III with an increased inclination excursion under Special Temporary Authority (STA), and there have been no complaints from other satellite operators regarding the receipt of unacceptable levels of interference from this satellite.

6. The 93^0 W.L. orbital location has been assigned to National Exchange Satellite, Inc. (NEXSAT) for one of its authorized hybrid 4/6 GHz-12/14 GHz Spotnet satellites.[9] NEXSAT is not expected to occupy the location, however, before 1993.[10] Given these circumstances, it is in the public interest to grant GTE Spacenet's application to relocate temporarily the satellite at this location. This will allow GTE Spacenet to serve its FSS customers and Geostar to serve its RDSS customers for several years without interruption. This authority is conditioned, however, on GSTAR III ceasing operations at 93^0 W.L. not later than the date on which that location is to be occupied by the 12/14 GHz satellite regularly assigned to that location even if GSTAR III has not exhausted its operational capability. In addition, GSTAR III's current orbital assignment at 64^0 W.L. is cancelled.

7. Accordingly, IT IS ORDERED that, pursuant to Section 0.291 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.291, GTE Spacenet Corporation's applications (File Nos. 1842-DSS-ML-89; 1843-DSS-MISC-89) ARE GRANTED.

8. IT IS FURTHER ORDERED that the authorization for GSTAR III IS MODIFIED to permit the operation of the satellite with an inclination excursion up to five degrees subject to these conditions:

(a) the satellite's attitude shall be corrected periodically to achieve a stationary spacecraft antenna pattern on the Earth's surface and centered on the satellite's designated service area;

(b) GTE Spacenet Corporation shall control all interference to adjacent satellites to levels not exceeding that which would be caused by the satellite network operating in a normal stationkeeping mode;

(c) GTE Spacenet Corporation can not claim interference protection in excess of that which would be received by the satellite network operating in a normal stationkeeping mode;

(d) GTE Spacenet Corporation shall continue to maintain GSTAR III at the authorized longitude orbital location with the appropriate east-west stationkeeping tolerance; and

(e) interference in excess of that described in (b) above shall not be caused to any other lawfully operated radio station, and any such interfering operations shall cease immediately upon notification.

9. IT IS FURTHER ORDERED that GTE Spacenet Corporation may locate GSTAR III at the 93^0 W.L. orbital location on condition that the satellite cease operations from that location not later than the date on which 93^0 W.L. is to be occupied by the 12/14 GHz satellite regularly assigned to that location.

10. IT IS FURTHER ORDERED that the orbital location assignments specified in *Assignment of Orbital Locations to Space Stations in the Domestic Fixed - Satellite Service*, 3 FCC Rcd 6972 (1988), *modified*, FCC 89-364 (adopted December 28, 1989), ARE FURTHER MODIFIED to cancel GSTAR III's assignment at 64^0 W.L.

11. IT IS FURTHER ORDERED that the assignment of any orbital location is subject to change by summary order of the Commission on 30 days notice and does not confer any permanent right to the use of the orbit or spectrum.

12. GTE Spacenet Corporation is afforded thirty days from the date of release of this order to decline the authorizations as conditioned. Failure to respond within that period will constitute formal acceptance of the authorizations as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* 84 FCC 2d 562 (1981); 2 FCC Rcd 55 (1987). GSTAR III provides fixed-satellite services in the 12/14 GHz bands.

[2] Without some compensating mechanism, satellites will drift in orbit due to the gravitational pull from the sun, the moon and other celestial bodies. To control this orbital drift and to keep the satellite relatively stationary, periodic maneuvers that reverse the drift are conducted by expending a small amount of fuel. Thus, the satellite is maintained within a pre-defined east-west and north-south boundary around its nominal orbit location. The amount of fuel on board the satellite that is available for stationkeeping generally determines the useful lifetime of the satellite.

[3] The inclination excursion is the extent to which the satellite orbital plane is tilted with respect to the equatorial plane of the Earth. With increased inclination excursions, a periodic correction in spacecraft attitude is needed to achieve a stationary antenna pattern on the Earth's surface.

[4] *See* GTE Spacenet Corporation, Mimeo No. 5175 (June 16, 1986); GTE Spacenet Corporation, Mimeo No. DA 88-1265 (August 15, 1988).

[5] GSTAR III was previously assigned to 125^0 W.L., and GSTAR IV was assigned to 64^0 W.L. *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972 (1988). After GSTAR III's launch malfunction, GTE Spacenet decided to reverse the locations of the two satellites, which are technically identical, and to cancel GSTAR III's assignment at 64^0 W.L., pending favorable action on these applications. *See* Letter from T.B. Natoli, GTE Spacenet, to Secretary, FCC (July 26, 1989).

[6] The 93^0 W.L. orbital location was recently assigned to National Exchange Satellite, Inc. (NEXSAT). *See* Reconsideration of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, FCC 89-364 (adopted December 28, 1989). NEXSAT is not expected to occupy the location before 1993. *See* National Exchange Satellite, Inc., 3 FCC Rcd 6992 (1988). GSTAR III is currently operating at 93^0 W.L. pursuant to Special Temporary Authority. *See* Letter from T.B. Natoli, GTE Spacenet, to Secretary, FCC (November 14, 1989).

[7] *See* Comsat General Corporation, 4 FCC Rcd 3820 (1989).

[8] Geostationary satellites that have been coordinated and notified under the international Radio Regulations receive international recognition and protection. The International Frequency Registration Board (IFRB), in its Rules of Procedure, has interpreted these regulations to define a geostationary satellite as one operating in a geosychronous orbit with an inclination excursion of five degrees or less. The international Radio Regulations also stipulate that any fixed-satellite that is not operating in geostationary satellite orbit may not cause interference into adjacent satellites, may not claim protection from any interference from adjacent geostationary satellites, and is at risk to lose the right to use its orbit location to a satellite operating in the orbit. Thus, in order not to jeopardize U.S. rights to use the geostationary orbit location temporarily assigned to GSTAR III, the satellite's inclination excursion is limited to five degrees.

[9] *See* Reconsideration of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, FCC 89-364 (adopted December 28, 1989). *See also supra* note 6.

[10] *See* National Exchange Satellite, Inc., 3 FCC Rcd 6992 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File Nos. 1733-DSS-MP/ML-89, 1734-DSS-MP/ML-89

Application for Modification of Construction Permit and Licenses for the Telstar 401 and 402 Satellites

ORDER AND AUTHORIZATION

Adopted: February 26, 1990; Released: March 2, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The American Telephone and Telegraph Company (AT&T) has applied to modify its Telstar 401 and Telstar 402 domestic fixed-satellites. Hughes Communications Galaxy, Inc. (Hughes) and GTE Spacenet Corporation (GTE Spacenet) filed comments on AT&T's application. For the reasons discussed below, AT&T's applications are granted.

2. AT&T was authorized to construct, launch and operate its Telstar 401 and 402 satellites in November 1988.[1] These satellites are hybrid satellites operating in both the 4/6 GHz (C-band) and the 12/14 GHz (Ku-band) frequency bands. The C-band portions of these satellites are intended to replace AT&T's C-band Telstar 301 and 302 satellites, which are reaching their end-of-service lives. Telstar 401 is assigned to the 97^0 W.L. orbital location; Telstar 402 is assigned to 89^0 W.L.

3. AT&T now seeks to add a spot beam covering Hawaii to the C-band portion of each satellite, to change the Ku-band transponder frequency plan on each satellite, and to add an uplink interference control subsystem to each satellite. Each of these requests is discussed in turn.

II. DISCUSSION

A. C-band Spot Beam

4. At C-band, Telstars 401 and 402 are currently authorized to operate with 24 transponders, each with a bandwidth of 36 MHz and an output power of 10 Watts. The satellites' C-band coverage area includes the 48 contiguous states, Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. Maximum edge of coverage equivalent isotropically radiated power (EIRP) is 35.0 dBW.

5. AT&T proposes to modify the satellites so that six of the C-band transponders on each satellite can be used for a switchable spot beam covering Hawaii. That is, each of these transponders will be able to be switched between the Hawaii spot beam and the principal 50-states plus U.S. Caribbean beam by ground command. The Hawaii spot beam is to have a nominal EIRP of 40.0 dBW, which, according to AT&T, is comparable to the EIRP on its in-orbit Telstar 301 and 302 satellites. AT&T represents that when it uses the proposed Hawaii beam, it will use signal formats that ensure that the transmission powers do not exceed the Commission's power flux density (PFD) limits.[2] AT&T states that the Hawaii spot beam will allow it to duplicate services currently being provided to its Telstar 301 and 302 customers.

6. No oppositions to AT&T's spot beam proposal were filed. However, GTE Spacenet, while not objecting to a grant, raises some concerns about potential interference into its Spacenet 3 satellite, which is operating at 87^0 W.L. GTE Spacenet asserts that the modified operations on Telstar 402 could cause intolerable interference into Spacenet 3's single-channel per carrier (SCPC) and occasional video traffic to Hawaii. It urges that any grant of AT&T's application be conditioned on AT&T's successful coordination with GTE Spacenet.

7. Given the two to three year construction period for a satellite, the Commission often receives requests from licensees to modify the technical design of their satellites while they are being built. If the proposed modification does not present any significant interference problems and is otherwise consistent with Commission policies, it is generally granted. [3]

8. AT&T's request is hereby granted. No operators who are assigned to locations adjacent to the Telstar satellites object to a grant of AT&T's spot beam application. Further, no significant interference problems are apparent. While the proposed spot beams are capable of producing a PFD toward the Hawaii service area in excess of the maximum permitted, this does not present a problem or require special conditions on AT&T's operations. As a licensee, AT&T is required to conform with the Commission's prescribed PFD limits and therefore it must use whatever signal formatting is needed to ensure that these limits are not exceeded. Consequently, AT&T's proposed switchable spot beam will allow it to provide better service to its customers in Hawaii, with no significant impact on its other customers or on adjacent satellite operations. Under these circumstances, allowing AT&T to add its proposed Hawaii spot beams to Telstar 401 and 402 is in the public interest.

9. Moreover, no extraordinary conditions regarding coordination will be imposed. GTE Spacenet has not presented any potential problems that appear insurmountable or that otherwise require a license condition. As with all licensees of new satellites, it is incumbent on AT&T to coordinate its operations with the operations of adjacent in-orbit satellites before it brings its satellite into service. A separate license condition in this regard therefore is not necessary. Moreover, AT&T is currently providing comparable service over its Telstar 302 satellite, which is located adjacent to Spacenet 3, and those operations apparently have been successfully coordinated. In addition, numerous replacement satellites with innovative state-of-the-art improvements have been and are continuing to be successfully coordinated among the affected operators without a special license requirement. Telstar 402 similarly should be successfully coordinated with Spacenet 3 and other adjacent satellites without the need for Commission involvement.

B. Ku-band Transponder Frequency Plan

10. In addition to the C-band spot beam, AT&T proposes to change the transponder frequency plan at Ku-band. As currently authorized, Telstar 401 and 402 are each configured with 24 Ku-band transponders, with each transponder having a bandwidth of 36 MHz and an output power of 60 Watts. AT&T proposes to reduce the number of Ku-band transponders on each satellite to 20, eight having a bandwidth of 56 MHz and twelve having a bandwidth of 36 MHz. All other technical specifications at Ku-band are to remain unchanged.

11. Hughes comments that AT&T's proposed transponder frequency plan does not appear to present any interference problems that cannot be resolved through coordination between Hughes and AT&T. It recognizes that although AT&T's plan is somewhat different from those used on other Ku-band satellites, variations in Ku-band transponder plans do exist and the Commission has, in fact, stated that a standard frequency plan for Ku-band satellites is not necessary.[4]

12. AT&T's request to modify its Ku-band transponder frequency plan is granted. While coordination of the Telstar 4 satellites with adjacent satellites will be affected by this change, any potential interference due to the modified plan can be resolved in the coordination process. Despite the variations in the transponder frequency plans for Ku-band satellites, transmissions on adjacent Ku-band satellites have been and can continue to be successfully coordinated through established methods.[5]

C. Interference Control Subsystem

13. Finally, AT&T proposes to incorporate an innovative uplink interference control subsystem using four spot beams, each covering approximately one-quarter of the contiguous United States (CONUS), and a special ground-controlled on-board switch. AT&T asserts that the subsystem can be used to avoid or locate an uplink interfering source. Because this new device could have the potential to improve orbit-spectrum efficiency and because it will not cause any interference to adjacent satellites, AT&T's request to incorporate the subsystem on its Telstar 4 satellites is granted.

III. CONCLUSION

14. Accordingly, IT IS ORDERED that Application File Nos. 1733/1734-DSS-MP/ML-89 ARE GRANTED and American Telephone and Telegraph Company IS AUTHORIZED to modify the technical specifications of its Telstar 401 and Telstar 402 satellites as proposed in its applications.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] American Telephone and Telegraph Company, 3 FCC Rcd 6980 (1988).

[2] Section 25.208 of the Commission's rules, 47 C.F.R. § 25.208, specifies the maximum PFD limits for C-band downlink emissions from space stations for all propagation and modulation conditions and for various elevation angles. AT&T states that it will vary the modulation on the spot beam signal so that the signal's PFD does not exceed the Commission's standards.

[3] *See, e.g.*, Satellite Business Systems, Mimeo No. 6194 (1985) (increase power on SBS-5); GTE Satellite Corporation, Mimeo No. 6192 (1985) (increase coverage capability of Spacenet 3 and 4).

[4] *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972, 6977, n. 42 (1988), *modified on other grounds*, FCC 89-364 (released January 11, 1990).

[5] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN SATELLITE COMPANY	File No. 1801-DSS-MP/ML-89
Application for Modification of Construction Permit and License for the ASC-2 Satellite	
Request for Orbital Reassignment of the ASC-2 and Contelsat-1 Satellites	File Nos. 1802-DSS-MP/ML-89 1803-DSS-MP/ML-89

ORDER AND AUTHORIZATION

Adopted: February 26, 1990; Released: March 2, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. American Satellite Company d/b/a Contel ASC (Contel ASC) has applied to modify its ASC-2 domestic fixed-satellite and to reverse the orbital assignments for ASC-2 and Contelsat-1. GTE Spacenet Corporation filed comments on Contel ASC's requests and Contel ASC filed a reply. For the reasons discussed below, Contel ASC's applications are granted subject to certain conditions.

2. Contel ASC was authorized to construct, launch and operate ASC-2 in 1983[1] and Contelsat-1 in 1988.[2] Both satellites are hybrid satellites that will operate in the 4/6 GHz (C-band) and 12/14 GHz (Ku-band) frequency bands. ASC-2 is assigned to the 83^0 W.L. orbital location and Contelsat-1 is assigned to 101^0 W.L. [3] Construction of ASC-2 was completed in 1986 and the satellite is currently in storage awaiting launch in 1991.[4] Construction of Contelsat-1 is required to begin by December 1990 and the satellite is required to be launched by September 1993.

3. Contel ASC requests authority to increase the nominal power level on two of the Ku-band transponders on ASC-2 from 16.5 Watts to 30 Watts. It also requests that the orbital assignments of ASC-2 and Contelsat-1 be reversed, that is, that ASC-2 be reassigned to 101^0 W.L. and Contelsat-1 to 83^0 W.L. No oppositions were filed with respect to Contel ASC's requests. However, GTE Spacenet, although not objecting to a grant, raises some concerns about potential interference from ASC-2 into its Ku-band GSTAR satellites currently operating at 103^0 W.L. and 105^0 W.L. Because Contel ASC states that, if authorized, it will implement its proposed technical modification to ASC-2 regardless of the disposition of its reassignment requests, the requests are considered separately.

II. DISCUSSION

A. Technical Modification to ASC - 2

4. As currently configured, ASC-2 contains six Ku-band transponders, each powered by a traveling wave tube amplifier (TWTA) having a nominal power level of 16.5 Watts, and one spare TWTA. Contel ASC proposes to replace three of the TWTAs with new ones, each having a nominal power level of 30 Watts. It would only operate two of the new TWTAs at any one time, with one being held as a spare. Thus, two of the six transponders will be operating with higher powers. Contel ASC states that the proposed power levels on the two affected transponders are consistent with the power levels of other licensed Ku-band satellites, and that operation of these transponders will not cause any undue interference into adjacent satellites, regardless of whether ASC-2 is located at 83^0 W.L. or 101^0 W.L. It further states that the increase in power will enable it to provide better quality and more efficient services to its customers. Contel ASC plans to make these modifications while the satellite is being refurbished prior to launch, and states that the satellite's scheduled launch date will not be affected.[5] Contel ASC does not propose any changes to the C-band portion of the satellite.

5. Given the two to three year construction period for a satellite, the Commission often receives requests from licensees to modify the technical design of their satellites while they are being built. If the proposed modification does not present any significant interference problems and is otherwise consistent with Commission policies, it is generally granted.[6] This allows the licensee to take advantage of the latest technology in providing service to the public. Construction of ASC-2 was authorized in 1983 and completed in 1986. However, the satellite has not been able to be launched due to the disruptions in launch services during the last several years. Contel ASC now seeks to incorporate recent technical developments by replacing three Ku-band TWTAs with more powerful ones. This will increase the throughput capacity of the two transponders and should permit Contel ASC to provide higher quality service to its customers.

6. Contel ASC's requests are granted. The proposed power levels of the two affected Ku-band transponders on ASC-2 are comparable to the power levels of other satellites approved by the Commission. Indeed, several satellites authorized last year as part of the most recent domestic fixed-satellite processing group are designed to operate with power levels higher than that proposed by Contel ASC.[7] No operators who are assigned to locations adjacent to ASC-2's current 83^0 W.L. location have raised any concerns regarding interference. Further, Contel ASC represents that implementing the proposed design modifications will not delay the satellite's launch. Under these circumstances, allowing Contel ASC to modify ASC-2 as proposed is in the public interest.

B. Orbital Reassignments

7. Contel ASC also requests that the Commission allow it to reverse the orbital assignments for ASC-2 and Contelsat-1. Contel ASC notes that it currently owns nine transponders on the Westar 4 satellite, which is located at

99^0 W.L., and is using this capacity to provide services to over 21,000 earth stations. Westar 4 is expected to reach its end of service life in late 1991 or early 1992. At that time, Contel ASC plans to transfer its Westar 4 customers to ASC-2.[8] It states that the impact of this transition will be minimized if ASC-2 is located at 101^0 W.L. rather than at 83^0 W.L.

8. According to Contel ASC, the design of a considerable number of the earth station antennas accessing the Westar 4 transponders allows the antennas to see more than 2^0 of the orbital arc at any time. Thus, the terminals will be able to continue to function if ASC-2 is located at 101^0 W.L. While Contel ASC acknowledges that the antennas will still have to be repointed to 101^0 for optimum performance, it states that disruptions in service to these customers will be substantially lessened. Contel ASC further states that, as a general matter, repointing an antenna 16^0 (that is, from 99^0 W.L. to 83^0 W.L.) rather than 2^0 carries with it a substantially greater risk of encountering line-of-sight obstructions. If line-of-sight obstructions are encountered, the entire terminal is usually moved to eliminate them. Contel ASC concludes that reversing the orbital assignments of ASC-2 and Contelsat-1 will therefore benefit Contel ASC and its customers. It also states that if the Commission approves this request, it will change the polarization sense of each satellite to conform with the Commission's assignment plan at C-band.[9]

9. While no oppositions to the reassignments have been filed, GTE Spacenet is concerned about potential interference from ASC-2 at 101^0 W.L. into its operations on GSTARs 1 and 2, which are in-orbit at 103^0 W.L. and 105^0 W.L., respectively. GTE Spacenet requests that any reassignment of ASC-2 to 101^0 W.L. be conditioned on Contel ASC's successful coordination with GTE Spacenet.

10. The Commission generally attempts to provide licensees the flexibility to launch their satellites into whichever of their assigned locations best suits their system needs at the time. Thus, the Commission has held that when satellites are technically identical, licensees are free to substitute one for the other at a particular orbital location.[10] Although Contel ASC's satellites are not technically identical, no adjacent operator has requested that the proposed reassignments be denied. Moreover, no significant interference problems appear likely. Further, Contel ASC represents that grant of its requests will allow its customers on Westar 4 to avoid the additional costs and service disruptions that will result if ASC-2 is required to remain at 83^0 W.L. Given these factors, Contel ASC's request is granted. Therefore, ASC-2 is reassigned to 101^0 W.L. and Contelsat-1 to 83^0 W.L. on the condition that ASC-2 is required to operate with vertical polarization and Contelsat-1 with horizontal polarization to conform with the basic structure of the 1988 assignment plan at C-band.

11. Finally, no extraordinary conditions regarding adjacent satellite coordination will be imposed on ASC-2's license, as GTE Spacenet requests. GTE Spacenet has not presented any potential problems that appear insurmountable or that otherwise require a license condition. As with all licensees of new satellites, it is incumbent on Contel ASC to coordinate its operations with the operations of adjacent in-orbit satellites before it brings its satellites into service. A separate license condition in this regard is therefore not necessary. Moreover, the proposed power levels on ASC-2 are comparable to power levels on other authorized Ku-band satellites, and these satellites are apparently being coordinated among the affected licensees without a special license requirement. ASC-2 similarly should be successfully coordinated with GSTARs 1 and 2 and other adjacent satellites without the need for Commission involvement.

III. CONCLUSION

12. Accordingly, IT IS ORDERED that Application File No. 1801-DSS-MP/ML-89 IS GRANTED and American Satellite Company IS AUTHORIZED to modify the technical specifications of its ASC-2 domestic fixed-satellite as proposed in its application.

13. IT IS FURTHER ORDERED that Application File Nos. 1802/1803-DSS-MP/ML-89 ARE GRANTED and American Satellite Corporation IS AUTHORIZED to reverse the orbital locations for its ASC-2 and Contelsat-1 domestic fixed-satellites on the condition that it operate ASC-2 with a vertical polarization sense at C-band and Contelsat-1 with a horizontal polarization sense at C-band.

14. IT IS FURTHER ORDERED that the Orbital Assignment Plan set forth in the Appendix to *Assignment of Space Stations in the Domestic Fixed - Satellite Service*, 3 FCC Rcd 6972 (1988), *modified*, FCC 89-364 (released January 11, 1990), IS FURTHER MODIFIED to assign ASC-2 to 101^0 W.L. and Contelsat-1 to 83^0 W.L.

15. American Satellite Company is afforded thirty days from the date of release of this order and authorization to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of this authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] American Satellite Company, 94 FCC 2d 39 (1983).

[2] Contel ASC, 3 FCC Rcd 6982 (1988).

[3] *See* Assignment of Space Stations in the Domestic Satellite Service, 3 FCC Rcd 6972 (1988) (*1988 Assignment Order*), *modified*, FCC 89-364 (released January 11, 1990).

[4] ASC-2 had been scheduled to be launched on the space shuttle in early 1987, but this launch, as well as all other pending launches, were cancelled. Contel ASC was subsequently granted an extension of time until June 1991 in which to launch ASC-2. *See* Letters from Chief, Domestic Facilities Division to Counsel, Contel ASC (December 29, 1987 and February 4, 1987).

[5] Contel ASC was granted a waiver pursuant to Section 319(d) of the Communications Act, 47 U.S.C. § 319(d), to begin to implement the proposed design modifications at its own risk and without prejudice to future Commission action on its pending application. *See* Letter from Chief, Domestic Facilities Divison to Counsel, Contel ASC (July 24, 1989).

[6] *See, e.g.*, Satellite Business Systems, Mimeo No. 6194 (1985) (increase power on SBS-5); GTE Satellite Corporation, Mimeo No. 6192 (1985) (increase coverage capability of Spacenet 3 and 4).

[7] For example, satellites licensed to American Telephone & Telegraph Company and Hughes Communications Galaxy, Inc. are to be equipped with 60 Watt Ku-band transponders, and satellites licensed to GTE Spacenet Corporation are to be equipped with 50 Watt Ku-band transponders. *See* American Telephone & Telegraph Company, 3 FCC Rcd 6980 (1988); Hughes Communications Galaxy, Inc., 3 FCC Rcd 6989 (1988); GTE Spacenet Corporation, 3 FCC Rcd 6986 (1988).

[8] As noted, Contelsat-1 will not be launched until mid-1993.

[9] At C-band, the satellite assigned to 101^0 W.L. is required to operate with vertical polarization and the satellite assigned to 83^0 W.L. is required to operate with horizontal polarization.

[10] *See, e.g.*, GTE Spacenet Corporation, 2 FCC Rcd 55 (1987); Western Union Telegraph Company, 86 FCC 2d 196, 209 (1981).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GENERAL TELEPHONE COMPANY OF THE SOUTHWEST — 7320-04/L-2244

Application for Review or Petition for Rule Making

MEMORANDUM OPINION AND ORDER

Adopted: February 15, 1990; Released: March 2, 1990

By the Commission:

INTRODUCTION

1. On December 27, 1988, General Telephone Company of the Southwest (General) filed an Application for Review or Petition for Rule Making (Application for Review). General seeks review of the Private Radio Bureau's *Memorandum Opinion and Order on Reconsideration* (*Reconsideration Order*) in the above-captioned proceeding, released November 23, 1988,[1] which found Invescom, Inc. (Invescom) to be operating a private carrier microwave system in compliance with Section 94.17(a) of the Commission's Rules.[2] Alternatively, General asks that we institute a rule making proceeding to revise the standards under which we grant licenses to operate entrepreneurial private microwave systems.

BACKGROUND

2. In the *First Report and Order* in PR Docket 83-426, [3] we adopted rules permitting entrepreneurs in the Private Operational-Fixed Radio Service (OFS) to offer microwave communications service on a for-profit private carrier basis to other entities eligible under Part 94 of our Rules.[4] Pursuant to the provisions of Section 94.17(a), on March 28, 1986, we granted Invescom licenses to operate a private microwave communications system between Denton and Dallas, Texas.[5]

3. On May 28, 1986, General filed a Request for Declaratory Ruling that Invescom's system, then in the planning stages, would violate our Rules. In sum, General argued that Invescom's operations would constitute a common carrier communications service rather than the type of private carrier communications service permitted under Section 94.17(a). On August 19, 1987, the Private Radio Bureau adopted a *Decision* concluding that Invescom's proposed operation was consistent with the characteristics of private for-profit microwave service discussed in the *First Report and Order* and denied General's Request for Declaratory Ruling.[6]

4. On September 18, 1987, General filed a Petition for Reconsideration of the Bureau's *Decision*, arguing that the Bureau had failed to give adequate consideration to certain evidence indicative of Invescom's common carrier status and that it erred when, despite such evidence, it determined that Invescom was a private carrier. It therefore asked the Bureau either to grant the earlier Petition for Declaratory Ruling or to set the case for hearing on the basis that "substantial and material questions [had] been raised as to the private nature of Invescom's operations."[7] The Bureau rejected all of General's arguments and denied the Petition for Reconsideration on November 23, 1988.[8] The instant Application for Review or Petition for Rule Making followed.

THE APPLICATION FOR REVIEW OR PETITION FOR RULE MAKING

5. General now asserts that the Bureau failed to acknowledge General's earlier request for a hearing on the issue of Invescom's private carrier status. Moreover, General asserts, the Bureau misapplied the standard for obtaining a hearing. General contends in a footnote that because Invescom could be disqualified as an OFS licensee (i.e., its licenses revoked) if General ultimately prevails in this case, the Bureau should have applied to General's hearing request the same standard used in determining whether a petition to deny a radio license requires designation for hearing, *i.e.*, the standard set forth in Section 309 of the Communications Act, 47 U.S.C. § 309.[9] Pursuant to Section 309 and relevant case law, General argues, the Bureau should have looked at the totality of the evidence and simply determined if it aroused sufficient doubt to merit further inquiry into the issue of whether Invescom can be classified properly as a private carrier. In this regard, General appears to suggest that the Bureau did not consider evidence regarding Invescom's advertising, its alleged ineligible users and its alleged uniform contracts. Instead, General asserts, the Bureau looked at the evidence only "piecemeal" and required General to prove its allegations conclusively. General therefore concludes that, on review, we should at a minimum grant the requested hearing.[10] General also argues that, regardless of whether Invescom is operating as a private carrier, it is violating the Commission's Rules by providing service to ineligible users and that the Bureau *Reconsideration Order* could be viewed as indicating that our eligibility standards will no longer be enforced.

6. Alternatively, General asks us to undertake a rule making proceeding to consider imposing restrictions on licensees of entrepreneurial private microwave communications systems to ensure that the service they offer will be "congruent" with the reasons articulated in the *First Report and Order* for permitting such systems.[11] These reasons, General observes, include the ability of the licensee to offer economical, reliable service tailored to the specific needs of a limited group of compatible users. General suggests that one method of ensuring this goal would be to require a private microwave licensee seeking to sell or lease capacity to take at least 50 per cent of that capacity for his own needs.[12]

7. Invescom, in an Opposition filed on January 9, 1989, contends that General's pleading should be dismissed as procedurally defective because it is frivolous and repetitive. The Application for Review, Invescom asserts, simply raises the same issues that the Bureau has already examined in depth without showing that the Bureau's decision was contrary to law or Commission policy. Invescom also asserts that this Commission should investi-

gate General's refusal to respond to the requests of Invescom's customers for rates and services. On January 24, 1989, General filed a Reply to Opposition in which it generally defends the procedural stance of its Application for Review or Petition for Rule Making and denies misconduct in providing service to Invescom customers.[13]

DISCUSSION

8. Section 309 specifies when a hearing is required to determine whether a license application should be granted. As noted, General's initial pleading was filed two months after Invescom's licenses were granted. Section 309, therefore, does not govern whether the Bureau should have designated for hearing the matters raised in General's petition for declaratory ruling. General cites to no authority for the proposition that a party requesting a declaratory ruling is entitled to a hearing under any circumstances, and we are aware of no such authority. The Commission has discretion whether to issue a declaratory ruling. 5 U.S.C. § 554(e). Moreover, although captioned as a petition for declaratory ruling, it seems apparent that the real relief sought by General is that the Commission revoke Invescom's licenses. Thus, General's petition more properly should be characterized as a petition to revoke. The fact that a revocation proceeding *could* be commenced under Section 312(a) of the Communications Act does not, however, *require* such a hearing, even if there were substantial and material questions of fact. The decision to initiate a revocation proceeding is also wholly within the Commission's discretion: Section 309 is inapplicable. *See* e.g., *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 513-14 and n. 18 (1988), *appeal pending sub nom. TeleSTAR, Inc. v. FCC*, No. 88-1153 (D.C. Cir. Feb. 26, 1989); *Tulsa Cable Television*, 68 FCC 2d 869, 877 (1978).

9. Even assuming General were correct that Section 309 applied here, no substantial and material questions of fact are present.[14] Our own examination of the record leads us to conclude that Invescom was entering into individually negotiated contracts with its customers. For example, as General itself recognized in its Supplement to Petition for Reconsideration, Invescom's hook-up fee for the period after July 26, 1986, was not assessed uniformly among all its customers. The monthly user charges also exhibit considerable variation between customers during the same time period, as General also recognizes. Our examination also reveals considerable variation in payment arrangements. With some customers, the hook-up fee is payable with the agreement. Others pay the fee upon commencement of service. Still other contracts pro-rate the hook-up fee over a six month period. Most users pay monthly service charges, but some pay on a bi-monthly basis. In sum, it appears from the contracts that there is a considerable degree of individualized negotiation between Invescom and its users.[15]

10. With respect to General's allegations regarding ineligible users, we agree that service to ineligible users is a violation of Commission Rules that can lead to the imposition of forfeitures or license revocation. Nothing in the *Reconsideration Order* contradicts this truism. In addition to the fact that Invescom stated that it had previously turned away customers on the basis of ineligibility, the Bureau conducted its own investigation of this matter and concluded that each Invescom customer is an eligible within the meaning of Part 94 of the Commission's Rules, 47 C.F.R. § 94.5.[16] Nothing in General's Application for Review suggests that the Bureau erred in this conclusion. Consequently, we find General's conclusory allegations regarding Invescom's service to ineligibles without merit. We wish to make clear, however, that while service to ineligible users is a violation of our Rules and may lead to enforcement action, it does not instantly convert an entity licensed as a private carrier into a common carrier.

11. We therefore deny General's Application for Review and find Invescom's operations in compliance with our Rules as to private carrier operations.

12. Finally, we turn to General's alternative request that we institute a rule making proceeding to change or modify our private carrier policies. That request will be dismissed without prejudice as not warranting consideration pursuant to 47 C.F.R. § 1.401(e). We see no present reason to depart from our original finding that it is in the public interest to permit OFS licensees to lease some or all of their system capacity.

CONCLUSION

13. Accordingly, IT IS ORDERED that the Application for Review or Petition for Rule Making filed by General Telephone Company of the Southwest is DISMISSED. This proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] General Telephone Company of the Southwest, 3 FCC Rcd 6778 (1988). Issuance of this Memorandum Opinion and Order was delayed to provide for Commission review of a recent court decision that might have affected the outcome of these proceedings. *See* Public Utility Commission of Texas v. Federal Communications Commission, No. 88-1274 (D.C. Cir. Sept. 22, 1989). The court's decision does not, however, affect our analysis here.

[2] 47 C.F.R. § 94.17(a).

[3] 57 RR 2d 1486 (1985).

[4] Section 94.17(a) of our Rules provides that "[l]icensees of radio stations authorized under this part may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis" to other eligible entities. Eligible entities are defined by 47 C.F.R. § 94.5 and include, generally, businesses, local governments, industrial/manufacturing concerns, and utilities.

[5] Invescom customers are interconnected to the Denton microwave station by dedicated wire lines leased from General, a common carrier that provides telephone service in communities surrounding the Dallas-Fort Worth Metropolitan area. Customers can send voice or data communications over the microwave channels to the Dallas station where they are then returned to the public switched telephone network. Communications originating in Dallas go through a Southwestern Bell or General central office to Invescom's Dallas station. The communications are transmitted to the Denton station and then through a private base exchange switch to the customer.

[6] General Telephone Company of the Southwest, No. 7320/L-2244 (August 19, 1987).

[7] Supplement to Petition for Reconsideration at 5.

[8] *Supra* note 1.

[9] Section 309(e) provides as follows:

> If, in the case of any application [for construction permits and station licenses, or modifications or renewals thereof], a substantial and material question of fact is presented. . . the Commission . . . shall formally designate the application for hearing on the ground or reasons then obtaining . . . .

[10] General Application for Review, 6-7.

[11] This examination could, General suggests, take place either in the context of a new rule making or in the context of PR Docket 83-426, which remains open for the purpose of determining whether common carriers should have access to OFS frequencies. *See* note 7 *supra*.

[12] General Application for Review, 8-11.

[13] The issue of service by General to Invescom's customers is not properly before us and will not be considered.

[14] Our conclusion that General's petition does not raise substantial and material questions of fact should not be taken to mean that our decision whether to institute revocation proceedings or other enforcement action is governed by the statutory test in Section 309 or that we have adopted that test as a matter of our discretion.

[15] We also disagree with General's unsupported assertion that the Bureau failed to evaluate the totality of the evidence.

[16] 47 C.F.R. § 94.5 provides in part that an entity is an eligible under Part 94 of the Commission's Rules if it is also eligible for licensing in a radio service under Parts 80, 87 or 90 of the Commission's Rules, or if the entity proposes to provide communications service to such eligibles.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

EDWARD W. ST. JOHN — File No. 98696-CL-P-291-A-86

For Authority to Construct and Operate a Station in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in the Pine Bluff, Arkansas MSA

MEMORANDUM OPINION AND ORDER

Adopted: February 15, 1990; Released: March 2, 1990

By the Commission:

1. The captioned application of Edward W. St. John (St. John) was chosen first in the lottery for a non-wireline cellular license in Pine Bluff, Arkansas. A petition to deny was filed by Emmett M. Capper (Capper). On October 6, 1987, the Mobile Services Division (MSD) released a *Memorandum Opinion and Order* (" *MSD Order* "), 2 FCC Rcd. 6012 (Mob.Serv.Div. 1987) denying the petition and granting St. John a construction permit. On November 6, Capper filed an Application for Review.[1] Responsive pleadings have been filed.

2. In his Petition to Deny, Capper argued that the St. John application must have been signed before the engineering portion of the application was completed, in violation of our rules. In support, Capper pointed out that the application was signed on April 28, 1986, while the application itself, at question 35(f), specified May 17, 1986 as the date of FAA notification. The MSD's *Order* found as to this issue that it is a reasonable procedure to notify the FAA of proposed antenna locations after the application is signed but before it is filed. The *Order* further found that it would be speculative to assume the entire engineering section was not completed until after April 28 merely because the date for FAA notification was listed as May 17. However, the Order pointed out that the correct response to question 35(f) ["Has FAA been notified?"] should have been "no" plus the date planned for notification. Furthermore, the *Order* found that St. John's affirmative answer, although erroneous, was harmless error because FAA notification was in fact made prior to filing.

3. Capper also argued in his Petition to Deny that because St. John's certification date was stamped in red ink, which did not photocopy, the application was defective. The *MSD Order* held that the date on the certification page is not "a matter of substance . . . such that clear reproduction is necessary for the public to determine the applicant's proposal. The letter perfect standard applies only to certain specified pre-lottery filing requirements, *Johnstown Cellular Communications Co.*, 1 FCC Rcd 1164, 1165 (1986), and the reproducability of the signature date is not one of these requirements." *MSD Order* at 6013.

4. In his Application for Review, Capper raises the same issues as he raised in his Petition to Deny. In support of his first argument that the post-dated FAA notification date indicates that St. John must have signed the certification page without seeing the application as a whole, Capper argues that the MSD should have accepted the truth of the allegations made in his Petition to Deny because St. John did not file an affidavit rebutting those arguments. Capper further argues that St. John must have signed the application before it was prepared, because of the language of Form 401 question 35(f) and the answer thereto. Question 35(f) asks whether FAA notification has been made (past tense), and asks the date such notification was made. An affirmative answer, together with the date of May 17, 1986, would indicate that the question was answered after that date. Here, however, the date given for FAA notification was several weeks after the date the application was signed. This is the basis of Capper's argument that St. John did not even have the engineering portion of his application completed (Schedule B) at the time he signed the certification and Schedule A of the Form 401.

5. Capper takes issue with the MSD Order's finding that St. John simply erred in his response to this question, and with the MSD Order's holding that it is speculative to assume on the basis of this error that the entire engineering portion of the application was not completed until after St. John signed the application. Capper asks "if the engineering had been completed by April 28, 1986, then why did the engineering portion indicate that the FAA notice had already been filed on May 17, 1986?" Capper further asks "if the engineer completed the engineering prior to his preparation and filing of the FAA notice, how did he know that he would be preparing and mailing the FAA notice *exactly* nineteen days hence (on May 17, 1986)? Why not eighteen days, or twenty days?" (Application for Review, page 4). Finally, Capper argues that the *MSD Order* is not consistent with Commission precedent, citing *Johnstown Broadcasting v. FCC*, 175 F.2d 351 (D.C. Cir., 1949); *Post - Newsweek Stations, Florida, Inc.*, 54 F.C.C.2d 254 (Rev. Bd., 1975); *WMOZ, Inc.*, 36 F.C.C. 201 (1964); *Triangle Broadcasting Co.*, 49 Rad. Reg. 2d (P&F) 1601 (A.L.J. 1981); and *Robert and Patricia Gardner*, 2 FCC Rcd. 1928 (Mob.Serv.Div. 1987).

6. In support of his second argument, Capper argues that because St. John stamped the date on his certification page in red ink, which did not reproduce on either the hard paper copy or the microfiche copy, the application contained a latent defect which, if it existed on the original, would have required dismissal under the letter-perfect standard. Capper cites *Central Illinois Cellular Limited Partnership*, 2 FCC Rcd. 436 (Com. Car. Bur. 1987) in support of this argument. Capper argues that members of the public or Commission staff would have been misled by the blank signature date on the copies, and that the MSD decision was inconsistent with *Burton K. Werner (Werner)*, 2 FCC Rcd. 1484 (Com.Car.Bur. 1987). In *Werner*, the original and the hard paper copy were accurate, and only the microfiche was incorrect in that two pages were superimposed. The MSD stated that any question regarding the two illegible pages could be satisfied by reviewing the paper copy or the original. Capper interprets *Werner* to hold that because the nature of the prob-

lem was obvious to anyone reviewing the microfiche, a reader would be alerted to check the paper copy. Capper argues that here, by contrast, a reader reviewing St. John's microfiche and the paper copy would not be aware that the original contained a certification date.

7. In opposition, St. John provides an affidavit from himself and from Robert Napp, Vice President of Satellite Systems Engineering. Mr. St. John's affidavit states that he was in possession of a set of complete applications for markets 281 through 305 at the time he signed them. St. John states, *inter alia*, that he scanned the technical information and that the engineering portions were complete and ready for filing on the date that he signed the applications. He also states that he now realizes that he should have answered the question on FAA notification in the negative, and given May 17, 1986 as the planned notification date. Mr. Napp's affidavit states that his company, Satellite Systems Engineering, was hired by Romulus Engineering to provide engineering services in connection with cellular applications. Napp indicates that it is their practice to designate a date for FAA filings which is subsequent to the date applicants are asked to review and sign their applications. SSE enters the expected filing date on the FAA forms and forwards the forms along with the applications to Romulus to be given to the clients for review and signature.

8. St. John further argues that the cases cited by Capper[2] are inapposite, because St. John signed an application which was complete. He states that the application, when filed, did not contain any exhibits that were prepared after St. John signed the application. Moreover, St. John argues that his qualifications would not be in doubt even if the engineering exhibit had been attached after his application was signed, so long as he believed in good faith that the application was complete when signed.

DISCUSSION

FAA Notification

9. Section 22.15(c)(i)(2) states in pertinent part:

> Every application for a new antenna structure or for an increase in antenna structure height shall state whether FAA notification is required. If notification is required, a copy of the FAA determination shall be included; if it is not available, the applicant shall state the name filed under, the date of filing and the location of the FAA office.

For the FAA notification as for all other information contained in an application, the individual signing a Form 401 certifies that "the statements made in [the] application are true, complete and correct . . . and are made in good faith." *See* FCC Form 401, p. 2. Moreover, cellular applicants for markets beyond the top-120 have an additional certification which states in pertinent part that "under penalties of perjury, . . . this application . . . is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules." *See* 47 C.F.R. § 22.913(b)(3).

10. St. John has complied with our rules, except for a non-material misstatement resulting from the manner in which his application was prepared and from his own failure to understand question 35(f) on the Form 401. St. John responded to question 35(f) on the Form 401 in the affirmative. As of the date the application was filed, the question was answered accurately. However, questions should be answered accurately as of the date of signing, as indicated by the certifications. St. John has stated in his affidavit that he now understands that he should have answered the question in the negative, giving the date of May 17 as the prospective filing date.

11. We find that St. John's misstatement is not material and was neither designed to conceal information nor to deceive this Commission. The prospective FAA filing date was clearly stated and complied with. The FAA notification was made prior to the application filing date. The FAA notification is not part of the "letter perfect" processing requirements and St. John's affidavit clarifying his answer reveals that he acted diligently and in good faith. Accordingly, we find that the application was "complete" and does not violate the certification requirements.

12. Nor can we agree with Capper that St. John must have signed the certification page without seeing the application as a whole. In his affidavit, St. John has indicated that he reviewed the entire application, including the engineering section, on the date he signed his application (April 28). Capper has offered no facts to show otherwise, merely an inference drawn from one misstatement made in the application. As discussed above, the misstatement is not material; nor was it designed to circumvent our cellular filing requirements. Moreover, it appears reasonable that an application preparer would specify a particular date, such as May 17, 1987, for filing a large number of FAA notifications connected with numerous applications in several cellular markets. Capper offers no facts to rebut Mr. Napp's affidavit. We find that while Capper made a *prima facie* case under section 309 of the Act, there does not remain, after reviewing all the pleadings, any substantial or material questions of fact that require a hearing.[3]

13. None of the cases which Capper cites supports his arguments that the FAA notification, even if defective, should result in dismissal of St. John's affidavit. *Johnston*, *supra*, at 354 holds *inter alia* that "[n]o one can swear to an event which has not yet transpired, or to material which is not yet in existence." We have indicated, and St. John acknowledges, that he should not have answered question 35(f) in the affirmative. However, for the reasons discussed, we found the error to be non-material and harmless. *Post - Newsweek* and *Triangle*, *supra*, raised an issue regarding the signature on an incomplete application, not, as here, a complete application which contained an error. *WMOZ*, *supra*, at 218, states that "no material [may] be added to an application once it has been signed by the licensee, unless such material has been shown to the licensee, and unless the application is thereafter redated, re-signed, and reverified." Here, no material was added to the application, so the facts of *WMOZ* are inapposite. Finally, *Gardner*, *supra*, is consistent with our decision herein. There, Gardner's application was petitioned on the grounds that although Gardner signed the certification page on April 21, 1986, the application contained references to FAA notification made four days later on April 25, 1986. The petitioner alleged that Gardner had improperly certified the application. Gardner responded that FAA notification was in fact made on April 25, 1986 and that there was nothing improper in representing to the Commission that the FAA notices would be filed a few days after the application was signed. The MSD

agreed, finding that it is a reasonable procedure to file FAA notification after the application is signed, as long as the notification is made before the application is filed with the Commission in accordance with our rules. Accordingly, contrary to Capper's argument, *Gardner* is consistent with our decision herein.

Signature Date

14. Capper argues that St. John's application is defective under the "letter perfect" rule because the date on his original certification page did not reproduce on the paper and microfiche copies of the application. The certification page and all information thereon (except the date) photocopied satisfactorily. In *Jacksonville Cellular Telephone Corporation*, 3 FCC Rcd. 5386 (1988), the Commission specified that our "letter perfect" standard applies only to certain specified pre-lottery filing requirements: certification as to completeness of the application, submission of a paper original and duplicate, the cover of which must include the applicant's name and the market name, market number, frequency block, and two microfiche copies of the application. Although Section 22.913 (b)(3) requires a date on the certification page, the letter perfect standard does not require that the date be clearly photocopied in the paper copy and the microfiche copies. The Common Carrier Bureau's decision in *Werner, supra*, upon which Capper relies, does not suggest otherwise.

15. In *Werner, supra*, two pages of the application's ownership exhibit had been superimposed onto one microfiche page. *Werner* found that the application was not defective because superimposition on a microfiche copy is not the kind of error that has the adverse effect in the initial processing of the application that the letter perfect standard is intended to prevent. We find similarly in this case. Accordingly, in the instant case, as in *Werner*, the letter perfect rule does not apply.

16. In contrast, *Central Illinois, supra*, cited by Capper, is a case in which the letter perfect rule did apply to disqualify the application. The applicant's name on the cover of the application, which is subject to the letter perfect standard, differed from the name used throughout the body of the application. Moreover, the name of the party is information vital to initial processing of the application. Accordingly, *Central Illinois* does not support Capper's position.

17. Even though acceptable under the letter perfect standard, applications must still meet acceptability criteria of Section 22.20 of the Rules.[4] Here, St. John's original certification page contains both the signature and the date, and satisfies the requirements of Section 22.913(b)(3). This rule section does not specify that the date on the signature page must be copied in the microfiche or in the paper copies of an application. Any question regarding circumstances under which the applicant certified the application may be resolved based on the original. Therefore, the application is acceptable under Section 22.20 of the Rules. Accordingly, Capper has failed to make a *prima facie* case in this instance.

18. In sum, Capper has provided neither facts nor legal arguments sufficient to prompt an investigation or a hearing, nor to dismiss or deny St. John's application. Accordingly, we affirm the *MSD Order*.

Ordering Paragraphs

19. WHEREFORE, IT IS HEREBY ORDERED that the Application for Review filed by Emmett M. Capper IS DENIED;

20. IT IS FURTHER ORDERED that the following pleadings of Emmett M. Capper ARE DISMISSED: Petition For Reconsideration, and Request to Hold Processing of Application For Review in Abeyance, and Reply to Opposition to Application for Review;

21. IT IS FURTHER ORDERED that the following pleadings of Emmett M. Capper ARE DENIED: Petition for Leave to File Late-Filed Petition For Reconsideration, and Motion to Strike (St. John's affidavits);

22. IT IS FURTHER ORDERED that the Motion to Strike (Capper's Petition for Reconsideration) filed by Edward W. St. John IS DISMISSED AS MOOT.

23. IT IS FURTHER ORDERED that the grant of the non-wireline cellular license for Pine Bluff, Arkansas to Edward W. St. John IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Capper has also filed a number of other pleadings, all of which we dismiss or deny herein. First, Capper's "Motion to Strike" the affidavits of Messrs. St. John and Napp (contained in St. John's Opposition to the Application for Review) is denied. Capper argues that St. John is estopped from filing affidavits in opposition to an application for review because St. John filed no affidavits in response to his (Capper's) Petition to Deny. We reject this argument. The subject affidavits are directly responsive to Capper's allegations in his Application for Review and Capper cites no rule section which supports his claim. Second, Capper's "Reply to Opposition to Application for Review" is dismissed because it is in violation of Section 1.115(d), *i.e.*, the Reply addresses matters not raised in the Opposition. Third, Capper's "Petition For Leave to File Late-Filed Petition for Reconsideration" is denied and the associated "Petition for Reconsideration" is dismissed. Section 1.104(b) specifies that either an application for review or a petition for reconsideration may be filed, but not both. Having already filed an Application for Review, Capper may not also file a Petition for Reconsideration. Accordingly, Capper's "Request to Hold Processing of Application for Review in Abeyance" pending a Common Carrier Bureau decision on Capper's Petition for Reconsideration is dismissed in view of the fact that its Application for Review is addressed herein. Capper's Petition for Reconsideration is also subject to dismissal because the Communications Act at 47 U.S.C. 405 specifies that such petitions must be filed within thirty days of the Order. This Commission lacks authority to waive the statutory requirement. In any event, we note that the Petition for Reconsideration does not raise any arguments which would cause us to reconsider the grant of St. John's license.

[2] *See supra*, para. 5.

[3] Capper also argues that St. John's rebuttal is fatally flawed because St. John did not provide an affidavit from Romulus, the primary application preparer which hired SSE. We disagree. St. John's own affidavit effectively rebuts Capper's allegations, and in fact is first-hand evidence that St. John signed a complete application. A statement from Romulus that it had sent the application to St. John to be signed would be little more than hearsay support of St. John's own affidavit.

[4] Section 22.20 states in pertinent part:

> (a) . . . an application will be unacceptable for filing . . . if:
>
> (1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or
>
> (2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

THOMAS W. TITTLE File No. 25436-CD-P/ML-01-86
d/b/a CALUMET RADIO
DISPATCH

For an additional facility
on 454.175 MHz for Station
KLF553 in the Public
Mobile Service at Jackson
Township, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: February 15, 1990; Released: March 1, 1990

By the Commission:

I. BACKGROUND

1. On May 6, 1986 RAM Broadcasting of Michigan, Inc. (RAM) filed an application for a public mobile service facility to operate on frequency 454.175 MHz at St. Joseph, Michigan. The RAM application appeared on Public Notice as accepted for filing on May 28, 1986, Report No. PMS-86-35 (the May Public Notice). Thomas W. Tittle d/b/a Calumet Radio Dispatch (Calumet) filed the captioned application for the same frequency on August 25, 1986. By letter dated May 13, 1987, the Mobile Services Division (MSD) dismissed Calumet's application as cut-off from comparative consideration by the previously filed RAM application.[1] Calumet has filed an application for review of the MSD dismissal. Responsive pleadings were filed.

2. Calumet requests that we set aside the MSD dismissal and return its application to pending status *nunc pro tunc*. In support of its request, Calumet raises two arguments relating to an applicant's right to receive notice of competing applications pursuant to Section 309(b) of the Communications Act of 1934 as amended (Act).

II. PUBLIC NOTICE

A. Contentions

3. Calumet maintains that its right to receive notice of conflicting applications was violated by the inadequacy of the Common Carrier Bureau's Public Notice announcing the acceptance for filing of RAM's application. Specifically, Calumet argues, although this Public Notice listed the St. Joseph, Michigan application by location, it omitted the applicant's name and the proposed frequency. According to Calumet, the Public Notice lists an entry for various modifications of license applications by RAM under File No. 23726-CD-P/ML-01-86, and these modification applications proposed operations on frequency 454.175 MHz. Calumet adds that a subsequent entry on the same page of the Public Notice lists additional proposals, including one at St. Joseph, under the same file number, but does not list the applicant's name or proposed frequency.[2] To notify potential applicants of conflicting applications that have been accepted for filing, Calumet asserts, "each public notice entry must stand on its own, without reference to either the immediately preceding or the immediately following ones, and must contain vital elements of the proposal, such as the frequency." (Calumet Application for Review at 12.)

4. Given the description of the relevant entries, Calumet claims, the May Public Notice failed to provide an applicant with adequate and fair notice of whether its application would be mutually exclusive with an earlier filed application, and in turn, failed to satisfy the notice requirement of Section 309(b) of the Act. To support this contention, Calumet relies on *Central Mobile Radio Phone Service*, 65 FCC 2d 648 (1977) (*Central*), involving a Public Notice listing an application as acceptable for filing, but omitting a line containing the frequency applied for. In that case, this Commission held that the Public Notice was insufficient to alert an interested party in the same market to the filing of a competing application.

5. RAM disputes Calumet's argument that the May Public Notice did not provide adequate notice of the details of RAM's St. Joseph application. Rather, RAM maintains, examination of the relevant page of this Public Notice reveals that the subsequent entry to which Calumet refers is actually a continuation of an immediately preceding entry that ends with a semi-colon, and that this preceding entry identifies RAM as the applicant and specifies 454.175 MHz as the proposed frequency. According to RAM, "[a]ny prudent reader scanning the May Public Notice for 454.175 MHz applications plainly would not have stopped at the semi-colon, and, continuing on, would have associated the St. Joseph entry with the immediately preceding, 454.175 MHz RAM entry (both entries were identified by the same file number)." (RAM Opposition at 4-5.)

B. Discussion

6. We reject Calumet's contention that the May Public Notice deprived potential applicants of their rights to fair notice as required by Section 309(b) of the Act. In this regard, we find the facts in *Central*, *supra*, to be distinguishable from those before us. Whereas the Public Notice involved in *Central* entirely omitted a line that included the frequency applied for, the May Public Notice at issue in the instant case clearly included a line showing that RAM proposed to operate on the frequency 454.175 MHz in a number of locations which were identified immediately following the frequency with a series of locations, including St. Joseph. Although a blank space appears between the beginning and end of this series of locations, it is obvious in context that the text appearing after the blank space was a continuing series of locations associated with the text above the blank space. We agree with RAM's argument that a reasonable review of page 5 of the Public Notice would have led Calumet to associate the entry listing the RAM St. Joseph application with the immediately preceding entry because both entries contained the same file number. The fact that the preceding entry ended in a semi-colon serves to alert applicants that the entry continues, and that reference should be made to the applicant's name and proposed frequency listed a few lines earlier. Indeed, Calumet concedes that the subse-

quent entry lists additional proposals, including the St. Joseph one, under the same file number. (Calumet Application for Review at 11.) As a unique identifier assigned to a single application, this file number (23726-86), which appeared at the beginning of both the entry above the blank space and the entry below it, served to notify Calumet that RAM proposed operation on frequency 454.175 MHz at St. Joseph.

7. Furthermore, since Calumet was interested in the St. Joseph market and frequencies in the 454 MHz band, it had an obligation to exercise reasonable diligence in reviewing any public notices that may have announced applications as accepted for filing for the St. Joseph or surrounding markets and for 454 MHz frequencies. *Compare Hispanic Information & Telecommunications Network, Inc. v. FCC*, 865 F.2d 1289, 1295-96 (D.C. Cir. 1989.) In *Central*, 65 FCC 2d at 651, we stated that "it is absolutely essential for a prospective applicant to be apprised of the location and the specific frequency of the facilities for which authorization is sought." But we also noted that "it would be in the public interest for both applicants and prospective applicants to closely examine the public notices . . . ." *Id.* For the foregoing reasons, we find that Calumet was adequately notified of RAM's proposed frequency and competing application, and hence the May Public Notice was sufficient to give the public fair notice of RAM's application.

III. STAFF STUDY LIST

A. Contentions

8. Calumet argues that this Commission did not provide sufficient notice of RAM's previously filed application because the FCC Staff Study List (Study List) [3] did not list RAM's proposed co-channel facility at St. Joseph until August 29, 1986, four days after the filing of Calumet's application. According to Calumet, applicants rely on the Study List to identify co-channel facilities entitled to interference protection and thus, the Study List's failure to give notice of RAM's conflicting proposal deprived Calumet of its right to receive notice in accordance with Section 309(b) of the Act.

9. In opposition, RAM contends that Calumet unreasonably relied on the Study List for its co-channel interference analysis. According to RAM, "[i]t is common knowledge that the Mobile Services Division updates the staff study only as time permits, and that the staff study therefore is frequently out of date." (RAM Opposition at 2-3.) Moreover, RAM asserts, Section 0.434(e) of the Rules warns the public not to rely on the Study List in that it constitutes an unofficial document prepared for the Commission's internal purposes.

B. Discussion

10. We find that the alleged lack of notice through the use of the Study List does not entitle Calumet to have its application reinstated *nunc pro tunc*. Our rules specifically provide that the cut-off period runs from "the date of the public notice." *See* 47 C.F.R. § 22.31(b)(2). Thus, our rules require Calumet to rely on our public notices and not the study list in calculating the appropriate cut-off date. *See also* 47 C.F.R. § 1.4(b)(4). Moreover, as the Common Carrier Bureau stated in *Smith Communications Systems, Inc.*, Mimeo No. 3654 (released April 9, 1986) (*Smith*), [4] the Study List "is made available to the public as a matter of convenience to be used as an aid and a reference guide for parties with a need to review a list of applications pending before the Commission. It was never intended to supplant our public notices and other official Commission records, such as station files, as the basis for determining mutual exclusivity . . . ." *Id.* at 3. *See Charles Rotkin d / b / a Northeast Communications*, Mimeo No. 2711 (Com. Car. Bur., released February 22, 1985), *recon. denied*, Mimeo No. 7155 (Com. Car. Bur., released September 23, 1985); *Crico Telecommunications of San Jose*, 3 FCC Rcd 4846 (Mob. Serv. Div. 1988).

11. Furthermore, Section 0.434(e) of the Rules cautions that Commission data bases are unofficial listings that should not be relied on by the public because in some cases the lists may not be consistent with the primary sources of information. Since the Study List does not constitute a final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public, it cannot be relied on, used or cited. 5 U.S.C. Section 552(a)(2). *See Smith*, slip op. at n. 6. Therefore, Calumet's reliance on the Study List in no way precluded the MSD dismissal of its application.

IV. CONCLUSION & ORDERING CLAUSE

12. For the foregoing reasons, we affirm the MSD dismissal of Calumet's application as cut-off from comparative consideration by the previously filed RAM application. Therefore, we reject Calumet's request to reinstate its application *nunc pro tunc*.

13. Accordingly, IT IS ORDERED that the Application for Review filed by Thomas W. Tittle d/b/a Calumet Radio Dispatch IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Pursuant to Section 22.31(b) of the Commission's Rules, the deadline for filing an application seeking comparative consideration with RAM's application would have been July 28, 1986. Therefore, Calumet's August 25, 1986 application was filed subsequent to the cut-off date established by the May Public Notice.

[2] The relevant section, as it appeared on page 5 of the May Public Notice, is as follows:

> 23726-CD-P/ML-01-86 RAM Communications of Michigan, Inc. (KAQ338) Permit and Mod of License to Change Antenna System for Facility Operating on 454.175 MHz at Book Building, 1249 Washington Boulevard, Detroit; Additional Facilities to Operate on 454.175 MHz at 200 Shore Club Drive, St. Clair Shores; Radio Drive, Mt. Clemens; 30500 Van Dyke, Warren; 755 West Big Beaver Road, Troy; 17117 West Nine Mile Road, Southfield; 20350 Allen Road, Trenton; Pontiac State Bank Building, 28 North Saginaw Street, Pontiac; 17841 North Laurel Park Drive, Livonia; Manning Hill Road, Lachine; 4570 E

Wheeler Road, Midland; 7 St & 8th Ave., Sault Ste. Marie; 5418 S Mission Rd., Mt. Pleasant; 25 W. Michigan Mall, Battle Creek; 1066 W 23rd Rd., Dighton;

23726-CD-P/ML-02-86 Route M-72, Three Miles West of Traverse City; 285 Lake Michigan Drive, Walker; Russell and Giles Roads, Muskegon; 232 Industrial Avenue, St. Joseph; and 4.7 miles Southwest of Marquette, Michigan.

[3] The Commission's Study List is made available to the public by the National Technical Information Service (NTIS) of the United States Department of Commerce. Under Section 0.465(d)(1) of the Rules, copies of computer-maintained data bases produced by the Commission may be obtained from NTIS in the form of magnetic tapes, microfiche, or diskettes.

[4] An application for review of the Bureau's decision in *Smith* was filed on May 9, 1986, but withdrawn by letter dated April 27, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of

BANGOR AND AROOSTOOK
RAILROAD COMPANY

For Waiver of the Commission's
Rules to allow the use of
certain Part 21 frequencies on
a non-common carrier basis

ORDER

Adopted: February 26, 1990; Released: March 5, 1990

By the Chief, Common Carrier Bureau

INTRODUCTION

1. Bangor and Aroostook Railroad Company ("B&A") seeks a waiver of Section 21.701(c) of the Commission's Rules, 47 C.F.R. § 21.701(c), which allocates frequencies in the Point-to-Point Microwave Radio Service for common carrier use. B&A seeks the waiver in order to permit the operation of seven radio stations on 6 and 11 GHz common carrier frequency bands on a non-common carrier basis.

2. Attendant to the subject waiver request, B&A filed applications to license these stations in the Private Operational Fixed Microwave Radio Service ("OFS"), which is governed by Part 94 of the Code of Federal Regulations. In its applications, B&A requests authority to operate new and modified facilities using the Part 21 frequencies in conjunction with the sites, facilities, and spare equipment of five stations currently licensed on these frequencies to County Microwave, Inc. ("CMI"), a common carrier licensee.[1] These applications were placed on Public Notice and no objections or comments to the applications have been filed.

SUMMARY OF ARGUMENT

3. B&A operates a railroad in remote regions of Maine. It states that the establishment of a microwave communication system will enable it to better accommodate its safety and operational communications needs. According to B&A, the cost of installing a microwave system utilizing OFS frequencies is too high to warrant serious consideration. However, it submits that it is possible for it to realize the benefit of a microwave system tailored to its own needs if it were allowed to utilize the 6 and 11 GHz common carrier frequency bands, rather than frequencies allocated to OFS. B&A explains that it has entered into a conditional agreement with CMI to purchase the aforementioned equipment. Purportedly, CMI is selling the equipment to B&A because CMI no longer has any use for it.

4. According to B&A, CMI's sole reason for obtaining the subject stations was to use them in connection with two cable television systems owned by Clarence B. Dow, Jr., the owner of CMI. Dow, whose cable systems were the previous licensee's only customers, has not been able to develop the stations into a common carrier service.[2] In fact, B&A states that Dow no longer uses the stations for his cable systems because the cable systems have switched to alternative transmission mediums such as satellite. B&A maintains that CMI's stations are completely inactive.

5. Because the stations are dark, with no foreseeable possibility that they will be utilized to provide common carrier radio service, B&A contends it can purchase the stations (equipment, sites, antennas, etc.) at a low enough price to make it economically feasible for it to establish a microwave communications system for the railroad. But, says B&A, such a system would be cost effective only if it is able to use the equipment without major modification. B&A explains that it has explored the possibility of retuning the equipment to operate on OFS frequencies and it has concluded that re-tuning is not practicable because the cost would be prohibitive. Converting from common carrier to private radio frequencies, says B&A, would necessitate changing filters, crystals and other oscillating equipment. Each conversion, says B&A, would exceed $11,000.00 per transmitter. According to B&A, this extra cost makes conversion to OFS frequencies economically infeasible. Consequently, it submits that it is imperative that it be allowed to utilize Part 21 frequencies on a non-common carrier basis.

6. A second argument that B&A makes for being allowed to operate the stations pursuant to Part 94, rather than Part 21, is that it plans to lease the system's excess capacity. B&A points out that, if it were to operate the stations as a common carrier, its ability to satisfy its own communications requirements could be constrained. B&A says that it is essential that any lessees of excess capacity be operationally compatible with the railroad, and a common carrier is not allowed to require that customers be compatible with its needs. Compatibility, says B&A, is one of the reasons why it would limit the leases of its excess capacity to its own rail customers.

7. Finally, B&A explains that it intends to purchase an OFS system located north of the CMI system and it may also acquire another OFS system located south of the CMI system. It proposes to interconnect these systems to form one large microwave radio network roughly paralleling B&A's railroad trackage from northern to southern Maine. B&A believes that having part of the system OFS and part common carrier would be both difficult to administer and confusing. It would necessitate individually negotiated rates for the OFS part of the system and uniform rates for the common carrier portion of the system.

DISCUSSION

8. The Commission has held that waiver to use frequencies for purposes other than those for which they are allocated will be granted where an applicant has demonstrated the following:

> (1) that the existing frequency allocation is not suited or is insufficient to accommodate the applicant's requirements;

(2) that the frequencies requested are under-utilized;

(3) that the proposed use of the frequencies will not be detrimental to their assigned users; and

(4) that the public interest will be served by a grant of the waiver.

See, e.g., Big Bend Telephone Company, Inc., 2 FCC Rcd 2413, 2414 (1986).

9. B&A has met the critieria for grant of its waiver request. B&A has shown that the high cost of re-tuning each radio transmitter receiver forecloses the use of OFS frequencies. It has also demonstrated that the 6 and 11 GHz common carrier bands in its proposed service area are under-utilized and that its use of these frequencies will not interfere with their assigned users. B&A's frequency search has revealed no discernible demand for common carrier frequencies in these sparsely populated parts of Maine and, even if a demand were to arise, there is ample spectrum available to satisfy potential common carrier usage. B&A's engineering statement, which was prepared by an independent frequency management firm, indicates that it will use two 6 GHz and two 11 GHz paths, leaving seven 6 GHz and eleven 11 GHz paths for future common carrier applicants in this sparsely populated area of northern Maine. Finally, given the limited use of the 6 and 11 GHz bands that B&A has proposed, and the absence of present and foreseeable demand for these bands by common carriers, the public interest would be better served by allowing B&A to use the frequencies for the provision of a private microwave system for its railroad and the railroad's customers than by allowing the frequencies to lie fallow. B&A's proposal also comports with the Commission's goal of promoting efficiency and innovation in the use of the electromagnetic spectrum.

10. Accordingly, IT IS ORDERED, that the requested waiver of Section 21.701 of the Commission's Rules IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] The subject stations, which are presently licensed under Part 21 of the Commission's Rules, are KCK58, Patten, ME; KCK59 Presque Isle, ME; WAU283, Madawaska, ME; WBB208, Midway, ME; and WPE76, VanBuren, ME. The two additional stations that B&A proposes to construct, using spare equipment from the five constructed stations, would be located at Charleston, ME and Dixmont, ME.

[2] Dow sought and received a waiver of Section 21.700 of the Commission's Rules in order to continue using the stations for the provision of cable television service in several communities in northern Maine.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-72

In the Matter of

Amendment of Section 73.202(b),	RM-6520
Table of Allotments,	
FM Broadcast Stations.	
(Lompoc, California)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 14, 1990; Released: March 5, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 2523 (1989), issued at the request of Bob Janecek (petitioner), proposing the allotment of Channel 224A to Lompoc, California, as that community's fourth local FM service. Petitioner filed supporting comments. Dellar-Davis Broadcasting Company, ("DDBC"), licensee of Station KDDB(FM), Channel 223B, Paso Robles, California, filed comments and a supplement thereto. Petitioner and DDBC filed joint reply comments. Petitioner also filed further comments.[1]

2. DDBC opposes the proposed use of Channel 224A at Lompoc, alleging that the allotment would preclude its relocation plans for Station KDDB(FM). It claims the relocation is essential to provide adequate technical service to the entire community of Paso Robles.[2] DDBC suggests that either Channel 285A or 286A could be allotted to Lompoc in lieu of Channel 224A, to satisfy the desire for an additional FM service at that community. Petitioner indicated its consent to DDBC's alternate proposal. Of the two channels suggested, we have chosen Channel 285A. *See* paragraph 3 of the Appendix to the *Notice*.

3. We believe the public interest would be served by allotting Channel 285A to Lompoc, California, since it could provide an additional FM service to that community.

4. A staff engineering analysis reveals that Channel 285A can be allotted to Lompoc in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[3]

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 19, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Lompoc, California	262B1,281B1, 285A,294B1

6. The window period for filing applications on Channel 285A at Lompoc, California, will open on **April 20, 1990,** and close on **May 20, 1990.**

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner's further comments were filed beyond the date specified for filing comments in this proceeding, and will not be accepted for consideration. *See* Section 1.415(d) of the Commission's Rules.

[2] DDBC remarks that its proposed transmitter site change will enable Station KDDB(FM), the only FM facility licensed to Paso Robles, to eliminate shadowing of a major portion of its coverage area, resulting in an interference-free signal to an additional 89,060 persons within its 1 mV/m contour.

[3] Coordinates for Channel 285A at Lompoc are 34-38-24 and 120-27-30. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-124

In the Matter of

Amendment of Section 73.202(b), RM-6663
Table of Allotments,
FM Broadcast Stations.
(Madisonville, Tennessee)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 14, 1990; Released: March 5, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of Major Broadcasting Corporation (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 4838 (1989), proposing the allotment of Channel 258A to Madisonville, Tennessee, as that community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel.

2. We believe the public interest would be served by allotting Channel 258A to Madisonville, Tennessee, as that community's first local FM service. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements[1] with a site restriction of 5.3 kilometers (3.3 miles) south of the city.[2] As stated in the *Notice* the site restriction is necessary in order to avoid a short spacing to the licensed transmitter site of Station WKDP-FM, Channel 258C2 at Corbin, Kentucky.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 19, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Madisonville, Tennessee	258A

4. The window period for filing applications will open on **April 20, 1990,** and close on **May 20, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR § 73.213(c).

[2] The coordinates are 35-28-23 and 84-22-14.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-480

In the Matter of

Amendment of Section 73.202(b), RM-6500
Table of Allotments,
FM Broadcast Stations.
(Sullivan and Newton, Illinois)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 14, 1990; Released: March 5, 1990

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7919 (1989), issued in response to a petition for rule making filed by Superior Broadcasting, Inc., licensee of Station WSAK(FM), Channel 292A at Sullivan, Illinois, proposing the substitution of Channel 294B1 for Channel 292A at Sullivan, Illinois, and modification of the license for Station WSAK(FM) to specify the higher powered channel. The *Notice* also proposed the substitution of Channel 278A for vacant but applied for Channel 295A at Newton, Illinois, in order to accomplish the upgrade at Sullivan. Petitioner filed supporting comments restating its intention to apply for the channel, if allotted. Stuart K. Lankford ("Stuart"), licensee of Station WAKO(FM), Channel 276A, Lawrenceville, Illinois, filed comments.[1]

2. We believe the public interest would be served by the substitution of Channel 294B1 for Channel 292A at Sullivan, since it could provide a first wide coverage area FM service to the community. The substitution can be made in compliance with the Commission's minimum distance separation requirements at petitioner's licensed site.[2]

3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WSAK(FM) to specify operation on Channel 294B1 in lieu of Channel 292A at Sullivan, Illinois. As indicated in the *Notice*, Channel 278A will be substituted for vacant but applied for Channel 295A at Newton, Illinois. The applicants for Channel 295A at Newton will be permitted to amend their applications to specify operation on Channel 278A and will retain application filing protection since the channels are of an equivalent class. *See, Phillipsburg, Kansas*, 48 FR 10844 (1983).

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 19, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Newton, Illinois	278A
Sullivan, Illinois	294B1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WSAK(FM), Sullivan, Illinois, IS MODIFIED, to specify operation on Channel 294B1 in lieu of Channel 292A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the applicants for Channel 295A at Newton, Illinois, as follows:

S. Kent Lankford
Route 3, Box 409
Lawrenceville, IL 62439

Jasper Broadcasting Company
P.O. Box 151
Newton, IL 62448

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Stuart's comments were timely filed, but they did not contain a certificate of service indicating a copy was served on the petitioner. Therefore, the comments have not been accepted. *See* Section 1.420(c) of the Commission's Rules and the *Notice of Proposed Rule Making* in this proceeding.

[2] The coordinates for Channel 294B1 at Sullivan are North Latitude 39-37-49 and West Longitude 88-30-28. Because the petition that resulted in the Sullivan allotment was filed prior to October 2, 1989, the Sullivan licensee may avail itself of the provisions of Section 73.213(c)(i) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-80

In re Applications of

PETER JOSEPH DEVLIN AND PATRICIA EVE DEVLIN (hereafter "Devlin")	File No. BPH-880216MS
EARL J. BROOKER AND CAROL L. BROOKER d/b/a BROOKER BROADCASTING (hereafter "Brooker")	File No. BPH-880217ML
MS. KIM M. GULSETH d/b/a MUFFY'S RADIO COMPANY (hereafter "Radio")	File No. BPH-880217MM
GREGORY D. SAUVE AND PATRICIA A. SAUVE d/b/a SEYMOUR FM BROADCASTING (hereafter "Sauve")	File No. BPH-880217MX

For Construction Permit for a New FM Station on Channel 282A (104.3 MHz) in Seymour, Wisconsin

HEARING DESIGNATION ORDER

Adopted: February 16, 1990; Released: March 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Brooker*. Brooker has petitioned for leave to amend its application on October 26, 1989. The accompanying amendment was filed after June 9, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. *Radio*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Radio have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Radio would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Radio filed such a statement, it is deficient since it fails to list any specific women's organization it proposes to utilize to encourage the referral of qualified female job applicants. Accordingly, Radio will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

5. *Sauve*. On June 29, 1988, Sauve petitioned for leave to amend its response to Section III, Form 301 concerning its financial qualifications. The accompanying amendment was filed after June 9, 1988, the last date for filing minor amendments as of right. Sauve has not demonstrated "good cause" for the submission of this late-filed amendment, therefore its petition will be denied and the amendment will be disallowed. In this regard, the material submitted by the applicant below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

APPLICANT	DEFICIENCY
Sauve	Answered "No" in response to Section III, Form 301

6. *Other Matters*. In a Rule Making proceeding, Courselle Broadcasting proposed the substitution of Channel 282A for Channel 259A at Mayville, Wisconsin. Both Brooker and Radio are short-spaced to this proposal by 1.4 kilometers. Courselle's proposal was denied pursuant to *Memorandum Opinion and Order* in MM Docket 84-231, released September 12 1986. However, Courselle has petitioned for review of this decision (COA 86-1618). Accordingly, an appropriate condition will be specified.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Radio would constitute a hazard to air navigation.

2. To determine with respect to Sauve whether the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Brooker IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Radio shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

13. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Sauve on June 29, 1988 IS DENIED, and that the accompanying amendment IS DISALLOWED.

14. IT IS FURTHER ORDERED, That in the event of a grant of the construction permit to either Brooker or Radio the grant shall be conditioned on the outcome in MM Docket No. 84-231.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Sections
0.459(g), 0.461(h) and 0.461(i)
of the Commission's Rules

ORDER

Adopted: February 26, 1990; Released: March 5, 1990

By the Managing Director:

1. This *Order* pertains to the time periods for filing applications for review and motions for judicial stay with respect to Freedom of Information Act (FOIA) decisions and requests for confidentiality.

2. In particular, section 0.459(g) of the Commission's rules states that, if a request for confidentiality is denied, applications for review of the denial may be filed within five working days. If the application for review is denied, the person who submitted the request is afforded five working days in which to seek a judicial stay of the Commission's ruling. 47 C.F.R. § 0.459(g).[1] Section 0.461(h) of the Commission's rules requires that applications for review of initial FOIA decisions involving documents submitted to the Commission in confidence be filed within ten working days after the date of the written ruling. 47 C.F.R. § 0.461(h)(1). Section 0.461(i) requires that applications for review of all other initial FOIA decisions be filed within 30 days after the date of the written ruling. 47 C.F.R. § 0.461(i). In addition, sections 0.461(h) and 0.461(i) provide that a person who submits records to the Commission has ten working days from the date of the written ruling on the application for review to seek a judicial stay of the Commission's determination to release the records at issue. 47 C.F.R. §§ 0.461(h)(4); 0.461(i).

3. The Commission has consistently interpreted the above-described rules as requiring that applications for review and motions for judicial stay be filed within the period of time plainly stated in those rules. The first day to be counted is the day after the date of the written or oral notice or ruling. The procedures for computation of time currently set forth in section 1.4(b), 47 C.F.R. §1.4(b), do not apply. This *Order* amends sections 0.459(g), 0.461(h), and 0.461(i) to reflect more clearly the Commission's practice in this area.

4. Accordingly, IT IS ORDERED THAT, effective immediately,[2] sections 0.459(g), 0.461(h), and 0.461(i) of the Commission's rules ARE AMENDED, as provided in the Appendix, pursuant to the authority contained in section 0.231(d) of the Commission's rules.

5. Notice and comment procedures are not required to implement these rule changes because they involve rules of agency procedure and practice. *See* 5 U.S.C. § 553(b)(A).

FEDERAL COMMUNICATIONS COMMISSION

Andrew S. Fishel
Managing Director

APPENDIX

47 C.F.R. Part 0 is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U. S. C. 155.

2. Section 0.459(g) is revised to read as follows:

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

* * * * *

(g) If a request for confidentiality is denied, the person who submitted the request may, within 5 working days, file an application for review by the Commission. If the application for review is denied, the person who submitted the request will be afforded 5 working days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing. The first day to be counted in computing the time periods established in this subsection is the day after the date of oral notice.

* * * * *

3. Section 0.461 is amended by revising paragraphs (h)(1), (h)(4), and (i) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(h)(1) If a request for inspection of records submitted to the Commission in confidence under §0.457(d) or § 0.459 is granted, an application for review of the action may be filed only by the person who submitted the records to the Commission. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be filed within 10 working days after the date of the written ruling, shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records. The first day to be counted in computing the time period

for filing the application for review is the day after the date of the written ruling. If an application for review is not filed within this period, the records will be produced for inspection. The person who filed the request for inspection of records may respond to the application for review within 10 working days after it is filed.

* * * * *

(h)(4) If an application for review filed by the person who submitted the records to the Commission is denied, or if the records are made available on review which were not initially made available, the person who submitted the records to the Commission will be afforded 10 working days from the date of the written ruling in which to move for a judicial stay of the Commission's action. The first day to be counted in computing the time period for seeking a judicial stay is the day after the date of the written ruling. If a motion for stay is not made within this period, the record will be produced for inspection.

* * * * *

(i) Except as provided in paragraph (h) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of records, and shall be captioned, "REVIEW OF FREEDOM OF INFORMATION ACTION." The envelope (if any) shall also be so captioned. The application shall be delivered or mailed to the General Counsel and shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available on review, the person who submitted them to the Commission (if any) will be afforded 10 working days after the date of the written ruling to seek a judicial stay. *See* paragraph (h) of this section. The first day to be counted in computing the time period for filing the application for review or seeking a judicial stay is the day after the date of the written ruling. (For general procedures relating to applications for review, *see* § 1.115 of this chapter.)

* * * * *

FOOTNOTES

[1] Notice of denial and of the time for seeking review or judicial stay is given by telephone, followed by a written notice.

[2] *See* 5 U.S.C. § 553(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE
& TELEGRAPH CO.,
Complainant,

v. File No. E-90-64

SOUTHWESTERN BELL
TELEPHONE CO.,
Defendant.

ORDER

Adopted: February 23, 1990; Released: March 5, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On November 22, 1989, American Telephone and Telegraph Company ("AT&T") filed with the Commission the above-captioned formal complaint against Southwestern Bell Telephone Company, Inc., ("Southwestern") seeking recovery of damages for defendant's alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988.

2. The parties to the above-captioned complaint have conducted discussions aimed at settling the complaint. As a result of these negotiations, a mutually agreeable settlement of all pending controversies between the parties was reached. On February 9, 1990, counsel for AT&T and Southwestern Bell filed a joint motion seeking dismissal of the complaint. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the joint motion to dismiss the above-captioned complaint IS GRANTED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 14, 1990

COMMISSION SEEKS COMMENT ON MCI APPLICATION FOR REVIEW REGARDING US WEST PACKET SWITCHING SERVICE

On November 18, 1986, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West) filed Transmittal No. 30 to propose revisions to their Tariff F.C.C. No. 1 to offer Public Packet Switching Network (PPSN) service. The Common Carrier Bureau (Bureau) adopted an Order on April 8, 1987, partially denying three petitions filed against Transmittal 30 and allowing it to become effective.[1] MCI Telecommunications Corporation (MCI) filed an application for review on June 6, 1987. US West filed an opposition to MCI's application on June 17, 1987.

MCI's application essentially asks the Commission to find unlawful the rates filed under US West Transmittal No. 30 as inconsistent with Commission policy although these rates are already effective. The record developed to date does not address the question whether the Commission (based on a review of a Bureau action denying petitions to reject proposed rates) can, consistent with relevant provisions of the Communications Act, find the rates unlawful if the rates are already in effect, and if the Commission has not conducted an investigation of the rates.

In order to permit the Commission to consider this threshold question, interested parties are invited to file comments on this issue no later than **March 14, 1990.** Reply comments should be filed no later than **March 29, 1990.** Filing parties must file an original and five copies of all comments and reply comments in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, commenters must submit one copy of their comments and reply comments to International Transcription Service, Inc. (ITS), at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of submissions in this proceeding may be obtained from ITS, 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Angel Cartagena, Tariff Division (202) 632-6917.

FOOTNOTE

[1] *See* Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Transmittal No. 30, 2 FCC Rcd 2730 (Com.Car.Bur. 1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. No. 12

Transmittal Nos. 2014, 2031, and 2032

Custom-Designed Integrated Services

ORDER

Adopted: February 22, 1990; Released: February 23, 1990

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) Transmittal No. 2014, filed on January 5, 1990 and scheduled to become effective February 26, 1990, revises the integrated service package provided under Tariff F.C.C. No. 12 as Virtual Telecommunications Network Service (VTNS) Option 2. AT&T Transmittal Nos. 2031 and 2032, filed on January 12, 1990 and also scheduled to become effective February 26, establish VTNS Options 32 and 33. A petition to reject or suspend and investigate these offerings was filed January 22, 1990 by Williams Telecommunications Group, Inc. (Williams), and AT&T replied February 1, 1990.

2. Transmittal 2014 revises VTNS Option 2 by adding Measured Ports, Rate Option 2 Measured Remote Ports, Customer-Specified Non-Port Locations, and Data Transmission Capabilities (DTCs) of various speeds. Other revisions affect the rate schedules for measured charges, change charges, and the offering's basic and minimum annual charges, and also establish three distinct volume pricing provisions.

3. By Transmittal 2031, AT&T establishes as VTNS Option 32 an arrangement serving the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. The minimum annual charge of $3.14 million, applied for the three-year period, is based on the provision of 4 Rate Option 2 Measured Remote Ports, 720 Measured Ports, 12 DTC network components, and 54 DTC access components at various speeds. This initial configuration is subject to a minimum provisioning level of 80 percent of each service element unless otherwise agreed. The monthly charges for DTC and VTC network components are also subject to a volume pricing plan. The demand and revenue data prepared by AT&T are premised on the provision of Option 32 to two customers.

4. By Transmittal 2032, AT&T establishes as VTNS Option 33 an arrangement serving the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. The minimum annual charge of $6.46 million, applied to a three year term, is based on the provision of 60 Rate Option 1 Measured Remote Ports, 3 Rate Option 2 Measured Remote Ports, and 294 Measured Ports, as well as 375 DTC network components and 1702 DTC access components of various speeds. The total number of ports, and of the DTCs provided at particular speeds, may not be reduced below specified minima without agreement. A volume pricing plan applies to measured charges.

5. Williams' petition principally restates its objections to AT&T's VTNS offerings generally. Williams states that the captioned filings "are but the latest illustration of the infirmities inherent in the Commission's Tariff 12 rulings." Williams Petition at 7. Williams' general arguments in the instant petition are identical to those described in recent Bureau Orders addressing previous VTNS offerings. *See, e.g.*, AT&T Communications (Transmittal Nos. 1948, 2033, and 2102), DA 90-232, February 16, 1990 (Com. Car. Bur.); AT&T Communications (Transmittal Nos. 1935, 1939, 1955, 1974, 1975, 1976, 1987, and 1988), DA 90-155, February 2, 1990 (Com. Car. Bur.). With regard to the captioned transmittals, Williams recites the particulars of revisions to VTNS Option 2 and argues that it, as well as Options 32 and 33, are targeted for a specific customer. *Id.* at 7-8. Williams notes the modest positive net revenues projected for VTNS Option 33, and the variation between projections and successive reports of net revenues for VTNS Option 2, and argues that more detailed support materials should be required for AT&T's demand and revenue projections. *Id.* at 12-13.

6. AT&T replies that Williams' "rote assertions" fail to recognize that initial demand for VTNS Option 32 is projected for two customers. *Id.* at 2. Challenges to AT&T's demand projections, it asserts, are groundless because VTNS customers commit to a specific quantity of service and guarantee the commitment with a minimum charge obligation. *Id.* at 6-8.

7. The Common Carrier Bureau has reviewed AT&T's Transmittal Nos. 2014, 2031, and 2032, the petitioner's assertions, and related pleadings. We conclude that no compelling argument has been presented that the tariffs are so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

8. Accordingly, IT IS ORDERED that the petition to reject, suspend or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal Nos. 2014, 2031, and 2032, filed by Williams Telecommunications Group, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 26, 1990

PLEADING CYCLE ESTABLISHED CONCERNING AT&T'S GOVERNMENT OUTBOUND CALLING PLAN

On January 30, 1990, the Common Carrier Bureau released an Order that rejected proposed revisions to AT&T Communications, Inc. (AT&T) Tariff F.C.C. No. 16. *AT&T Communications, Inc.*, Tr. No. 1876, DA 90-119, released Jan. 30, 1990. In that Order, the Bureau concluded that AT&T's offering of Government Outbound Calling Plan Option 2 (GOCP2) was unreasonably discriminatory under Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), and therefore patently unlawful.

On February 16, 1990, AT&T filed an application for review of the Bureau's Order. Pursuant to Sections 1.4 and 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.115, applications for review of this Order may be filed not later than Friday, March 2, 1990. Other interested parties may also seek review of the Bureau's Order.[1] In order to afford interested parties sufficient time to file pleadings concerning the issues addressed by the Bureau's Order, the deadline for filing petitions for reconsideration and applications for review of this Order is hereby extended to March 15, 1990. Oppositions to AT&T's application for review and any other pleadings seeking review of the Bureau's Order shall be filed not later than March 30, 1990. Replies to oppositions shall be filed not later than April 10, 1990.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] *See* Letter of W. S. McCollough, Assistant Attorney General, State of Texas, to Secretary, FCC, dated Feb. 13, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERITECH OPERATING COMPANIES
Revisions to Tariff F.C.C. No. 2

Transmittal Nos. 393 and 427

ORDER

Adopted: February 26, 1990; Released: February 27, 1990

By the Chief, Common Carrier Bureau:

1. The Ameritech Operating Companies (Ameritech) filed the above-captioned tariff revisions on November 17, 1989. The scheduled effective date is February 28, 1990. The Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a petition for rejection or, in the alternative, suspension. Ameritech replied.

2. Ameritech states that it seeks to clarify the number and types of circuits that may be multiplexed onto a DS1 service. Ameritech deletes the provision that allows use of a multiplexed DS1 channel for metallic service because, according to Ameritech, metallic service cannot by definition be provided over these facilities. Second, the tariff states that if more than 16 channels of the DS1 are used for Direct Digital Service (DDS), performance parameters and credit allowances will not apply to any circuits multiplexed onto the DS1. The carrier maintains that when more than 16 DDS circuits are put onto one DS1, there are technical difficulties in maintaining performance parameters.

3. Ad Hoc interprets the provisions to limit to 16 the number of channels of a DS1 circuit that can be used for DDS and to preclude the use of any of the multiplexed channels for metallic service. Ad Hoc further interprets the transmittal to allow configurations that currently exceed the proposed maximum to remain in place, but asserts that the transmittal eliminates all performance parameters and credit allowances for those circuits. Ad Hoc argues that Ameritech has not documented the technical difficulties nor demonstrated the appropriateness of its proposed action. Ad Hoc maintains it does not know whether problems with these circuits are common or infrequent, consequential or minimal. Finally, Ad Hoc suggests that rather than implementing DS1 restrictions on a carrier by carrier basis, an industry wide analysis should be performed, and general standards adopted.

4. Ameritech replied that Transmittal No. 393 was only intended to limit the availability of credit allowances for down time when customers put more than 16 DDS services on a DS1 circuit. Ameritech stated that it did not intend to prohibit actual use of the DS1 for any number of DDS services. Therefore, Ameritech claimed that Ad Hoc's objections were moot. Nevertheless, on February 26, 1990, Ameritech revised its proposal to state only that if more than 16 channels of the DS1 are used for DDS, credit allowances will not be available unless the DS1 circuit is rendered inoperative as a consequence of trouble originating in the Ameritech network. Furthermore, Ameritech deleted language concerning the inapplicability of performance standards.[1]

5. The Common Carrier Bureau has reviewed the tariff transmittals and the pleadings filed by Ad Hoc and Ameritech. We find that no compelling argument has been presented that the tariff transmittal, as revised, is patently unlawful so as to require rejection and that an investigation of the revisions is not warranted at this time.

6. IT IS THEREFORE ORDERED that the petition against Ameritech Operating Companies Tariff F.C.C. No. 2, Transmittal No. 393, filed by the Ad Hoc Telecommunications Users Committee IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Ameritech Operating Companies Transmittal No. 427, filed Feb. 26, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 27, 1990

COMMISSION SEEKS COMMENT ON SOUTHWESTERN BELL TELEPHONE COMPANY ELECTRONIC DIRECTORY ASSISTANCE SERVICE

Pleading Cycle Established

On December 1, 1988, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 1741 to propose revisions to its Tariff F.C.C. No. 68 to offer DirectLine-Custom service (DLC), a new electronic directory assistance service. DLC will allow end users to have direct electronic access to SWB's directory listing database. SWB also requests a waiver of the Commission's Rules to the extent necessary to permit the establishment of new switched rate elements for DLC. On December 27, 1988, ALC Communications Corporation filed a petition to suspend and investigate these proposed tariff revisions. SWB filed its reply on January 12, 1989. Due to a series of computer problems which delayed SWB's scheduled introduction of the service, SWB sought and received several extensions of the effective date of the tariff.

SWB's proposal in part would require the Commission to find that the planned electronic directory assistance service is a basic communications service. The record developed to date does not address the question whether DLC is a basic or an enhanced communications service. This determination is relevant because pursuant to Section 64.702 of the Commission's Rules, 47 C.F.R. § 64.702, enhanced services are not regulated under Title II of the Communications Act.

We have decided to seek additional pleadings in this proceeding because the issues raised by the SWB proposal may arise more generally in other tariff proposals. We therefore invite SWB and other interested parties to file comments on the issue of whether DLC is a basic or enhanced communications service no later than March 29, 1990. Reply comments may be filed no later than April 18, 1990. Filing parties must file an original and five copies of all comments and reply comments in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, commenters must submit one copy of their comments and reply comments to International Transcription Service, Inc. (ITS), at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and a copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Linda Trochim, Tariff Division (202) 632-6917.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ATLANTIC TELE-NETWORK COMPANY — File No. I-T-C-89-130

Application for Authority to Operate as an International Resale Carrier

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 1990; Released: February 28, 1990

By the Chief, Common Carrier Bureau:

1. The Bureau has under consideration a request filed by the Virgin Islands Telephone Company (Vitelco) for an extension of time within which to comply with the conditions imposed by the Commission in authorizing Vitelco's affiliate, Atlantic Tele-Network Company (ATN), to provide international switched voice services between the U.S. Virgin Islands and various overseas points by reselling the services of other carriers.[1]

BACKGROUND

2. In an order released on November 27, 1989 pursuant to delegated authority, ATN was authorized to provide international switched voice services between the U.S. Virgin Islands and various overseas points through the resale of the switched voice services of other carriers. Since ATN is the parent of Vitelco, the local exchange carrier on the U.S. Virgin Islands, the *ATN Order* imposed certain safeguards and conditions similar to those imposed by the Commission in its *Report and Order* in CC Docket No. 86-309.[2] These conditions were imposed because of the potential for Vitelco to subsidize or otherwise favor the interexchange operations of its parent, ATN.

3. The proposed conditions relate to interim access arrangements, cost allocation and other non-structural safeguards. With respect to the access conditions, the Bureau stated that: (1) AT&T must receive access arrangements at least as desirable as its current access; and (2) to the extent that access arrangements are unequal, AT&T as the traditional off-islands carrier must receive the superior access and all other authorized carriers must receive access equal to that provided ATN or any other affiliated company. In addition to the access conditions, Vitelco was required to comply with the cost allocation mechanisms set forth in paragraph 64 of the Commission's *Report and Order* in CC Docket No. 86-309 and to file a proposed plan for complying with Customer Proprietary Network Information (CPNI) and other network disclosure requirements set forth in the *Report and Order* within 90 days from the release date of *ATN Order*.

4. Although Vitelco questions the imposition of the above conditions based on perceived differences in the circumstances in the Puerto Rico market, it states that it does not seek reconsideration of the conditions, but only an extension of time in which to comply with them. Vitelco states that compliance with the conditions would be difficult since it is still occupied with post-Hurricane Hugo recovery and restoration efforts. According to Vitelco, once its reconstruction effort is completed in June 1990, it would be in a better position to address compliance with the conditions, which would likely take several months. In this regard, Vitelco cites the amount of time it has taken the Puerto Rico Telephone Company (PRTC) to file a CPNI plan acceptable to the Commission. In addition, Vitelco cites a recent Commission order which granted PRTC a waiver of the year-end 1989 equal access conversion deadline established in the *Report and Order*.

5. Vitelco also requests an extension of time to comply with the interim access condition imposed in the *ATN Order* which requires that it provide AT&T with the superior access in the absence of equal access. Absent an extension to comply with this condition, Vitelco notes, it would be prevented from fulfilling its agreement to route twenty percent of all off-island traffic to the St. Thomas and San Juan Telephone Company (STSJ). Vitelco states that the presence of STSJ as an alternative to AT&T is crucial to provide diversity and redundancy in routing traffic from the U.S. Virgin Islands since AT&T's facilities do occasionally experience failure.[3] In light of the diversity and redundancy provided by STSJ's facilities, Vitelco believes that its allocation of twenty percent of Virgin Islands-originated traffic to STSJ is reasonable and provides an economic incentive to STSJ to incur the additional costs associated with providing retail service to the public.[4]

6. AT&T opposes the extension of time because it would permit the continuation of the traffic allocation agreement between Vitelco and STSJ. AT&T notes that in seeking Section 214 resale authority, ATN assured the Commission that AT&T would "continue to enjoy the same premium access arrangements it currently enjoys" and that "AT&T's access will not be impaired."[5] AT&T states that its access is impaired when it is modified to prevent end-users from using AT&T's services to reach Canada and the 305 Florida area code and to prevent AT&T from rerouting certain traffic from primary to secondary routes. According to AT&T, customers wishing to use STSJ's services can do so through the non-premium access that is being used by other carriers in the U.S. Virgin Islands.

DISCUSSION

7. Upon consideration of Vitelco's motion for an extension of time to comply with the conditions imposed in the *ATN Order*, we conclude that a grant of the motion with respect to the non-access conditions set forth in paragraph 9 of the *ATN Order* will serve the public interest. Vitelco's motion is denied in all other respects. In granting Vitelco's motion, in part, we believe that Vitelco has shown good cause for an extension of time in which to comply with the non-access conditions. However, Vitelco has not adequately justified an extension until year-end 1990 for compliance with these conditions. Although Vitelco states that it is in the process of restor-

ing its network, we note that paragraph 9 of the *ATN Order* only requires Vitelco to file a proposed plan for complying with the cost allocation and CPNI and network disclosure requirements. Accordingly, we believe that an extension until August 31, 1990 is a reasonable period for Vitelco to file its proposed plan.

8. We deny Vitelco's motion to the extent that it seeks additional time to comply with the interim access conditions of paragraph 8 of the *ATN Order*. Such an extension would permit the continuation of the traffic allocation agreement between Vitelco and STSJ, which violates the *ATN Order*. The agreement provides premium access to STSJ in addition to AT&T, the traditional off-island carrier, and proposes to route up to 20% of U.S. Virgin Islands-originating calls to STSJ without the approval of its customers.

9. In seeking a continuation of this agreement through an extension of time, Vitelco has misread the *ATN Order*. In the *ATN Order*, the Bureau clearly stated that in the absence of equal access, AT&T, as the traditional off-islands carrier, must receive the superior access. The Bureau also stated that "ATN's attempt to justify Vitelco's offering premium access to more than one carrier in a non-equal access environment is inconsistent with the Commission's finding in the *Report and Order*."[6] At the time the *ATN Order* was issued, the Commission had no indication that such an agreement was in effect. The access conditions were intended to speak prospectively in the event that Vitelco attempted to provide premium access to more than one carrier in a non-equal access environment. Thus, the *ATN Order* contemplated that Vitelco would comply with the access conditions in order to prevent such an arrangement from being implemented. Accordingly, we hereby reaffirm the applicability of the access conditions set forth in the *ATN Order* to Vitelco.

10. Vitelco's attempt to justify the continuation of the traffic allocation agreement based on diversity and redundancy is misplaced in the context of this case.[7] The Commission has previously found that the benefits of full and fair competition are served by the implementation of equal access.[8] The Commission has required for independent telephone companies that end offices with stored program control switches be converted to equal access within three years of receipt of a reasonable request for equal access from an OCC (other common carrier). Absent a request, these end offices were to be converted as soon as possible in light of the company's capital constraints and market and business conditions in the area.[9] In *MTS and WATS Market Structure*, the Commission described equal access as "exchange access services that are equal in type and quality to that offered to AT&T." 100 FCC 2d at 875.

11. In its request for an extension of time to comply with the access conditions of the *ATN Order*, Vitelco appears to argue for the need for equal access implementation in the U.S. Virgin Islands, since it proposes to provide premium access to STSJ as well as AT&T. If Vitelco is prepared to implement equal access, it must comply with the Commission's equal access orders.[10] We find that Vitelco has not complied with those requirements. Moreover, as we found in the *ATN Order*, the offering of premium access to more than one carrier in a non-equal access environment is inconsistent with the Commission's finding in the *Report and Order*. Accordingly, we find that Vitelco's offering of equal access to more than the traditional off-islands carrier (AT&T) in a non-equal access environment violates our access requirements and is inconsistent with our prior findings with respect to interim access in Puerto Rico. Thus, an extension of time for Vitelco to continue the provision of premium access to STSJ would be inconsistent with our rules and policies.

12. Accordingly, Vitelco's request for an extension of time in which to comply with the non-access conditions set forth in paragraph 9 of the *ATN Order* IS GRANTED and the time for Vitelco to file its proposed plan for complying with the cost allocation mechanisms and the CPNI and network disclosure requirements set forth in paragraph 9 is extended until August 31, 1990.

13. IT IS FURTHER ORDERED that Vitelco's request for an extension of time to comply with the interim access conditions in paragraph 8 of the *ATN Order* IS DENIED.

14. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Atlantic Tele-Network Company, 4 FCC Rcd 8302 (1989) (hereinafter *ATN Order*).

[2] Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, CC Docket No. 86-309, Report and Order, 2 FCC Rcd 6600 (1987) (hereinafter *Report and Order*), *recon. pending*.

[3] Vitelco relies heavily on the damage to AT&T's facilities caused by Hurricane Hugo and the computer problem experienced by AT&T on January 15, 1990 as examples of disruption of service which required it to route traffic via the facilities of STSJ.

[4] STSJ has traditionally functioned as a carrier's carrier although it has been authorized to provide direct service to the public.

[5] ATN's Reply dated August 22, 1989, p. 6.

[6] 4 FCC Rcd at 8303.

[7] In the absence of the traffic allocation agreement, customers on the U.S. Virgin Islands could still access STSJ and other carriers through non-premium access arrangements. Thus, even before the agreement, AT&T was not the only route off of the islands. In addition, the agreement appears to have been implemented in such a manner as to accomplish results other than merely providing diversity and redundancy. For example, AT&T states, and Vitelco does not deny, that all U.S. Virgin Islands-originated traffic to Canada as well as traffic from the U.S. Virgin Islands to the 305 area code in Florida is currently being routed via STSJ's facilities. In effect, AT&T has been replaced as the traditional off-islands carrier to these locations without any documentation that its facilities are either unavail-

able or inadequate. The result is that customers who dial 1+ or 0+ access thinking that their calls will be routed via AT&T may have their calls routed via the facilities of STSJ without their consent.

[8] *Report and Order*, 2 FCC Rcd at 6607.

[9] *See* MTS and WATS Market Structure, CC Docket No. 78-72 Phase III, 100 FCC 2d 860 at 875 (1985), *recon. denied*, FCC 86-4 (released January 6, 1986).

[10] *See* Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (Allocation Order) *modified*, 101 FCC 2d 503 (1985) (Waiver Order), *modified on reconsideration*, 102 FCC 2d 503 (1985); Illinois Citizens Utility Board Petition for Rule Making, 2 FCC Rcd 1726 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-62

In re Applications of

WAYNE L. DILUCENTE (hereafter "Dilucente")	File No. BPH-871203MJ
M&M BROADCASTING, LTD. (hereafter "M&M")	File No. BPH-871203MS
SOUTHWEST FLORIDA RADIO ASSOCIATES, INC. (hereafter "Southwest")	File No. BPH-871203MT
CHRISTINE HARVEL (hereafter "Harvel")	File No. BPH-871203NH
FLORIDA RADIO BROADCASTING (hereafter "Florida")	File No. BPH-871203NI
KATHLEEN BELL HAIDAR, d/b/a CORAL COVE RADIO ASSOCIATES (hereafter "Coral Cove")	File No. BPH-871203NJ

For Construction Permit
for a New FM Station on Channel 300
in Coral Cove, Florida

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: March 6, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Florida.* Florida has listed its overall tower height above ground (including lighting) as 6 meters in Item 7, Section V-B of FCC Form 301. This is obviously an erroneous figure when viewed in comparison with the other heights listed in Item 7, and in the tower sketch included as Exhibit 1. From both the tower sketch and Item 7 of Section V-B, the overall height above ground (including lighting) can be confidently and reliably determined to be 98.5 meters. Accordingly, Florida shall be required to file a corrective amendment to its application with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. In its application, Florida indicates that William Walker, its 51% general partner, is a principal in Private Networks, Inc. (PNI) which in turn owns 51% of PN Radio Company, a Partnership. Florida indicates that PN has applications before the Commission to serve the following communities: Roswell, New Mexico (BPH-850711NQ); Corydon, Indiana (BPH-851113ME); Portage, Michigan (BPH-851113MF); Arlington, New York (BPH-860123MN); Orlando, Florida (BPH-860505ML); Upper Arlington Ohio (BPH-860505MK); and Goodlettsville, Tennessee (BPH-861217MY). Of these, Florida notes that the Corydon, Orlando, and Upper Arlington applications have been designated for comparative hearing, in MM Docket Nos. 86-237, 87-305, and 87-370, respectively. Additionally, Florida notes that a PN application for Fargo, North Dakota (BPH-850711OL) was dismissed with prejudice on July 11, 1985 for failure to prosecute, and that Florida principal David Larsen has a 50% interest in Lynchburg Radio Broadcasting, a Partnership, applicant for a new FM station in Lynchburg, Virginia (BPH-870918MO).[1]

4. Pursuant to 47 C.F.R. § 1.65, applicants are responsible "for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application." Florida's information with respect to its other broadcast interests is incomplete and inaccurate. For example, several of the listed broadcast interests have been designated for hearing, dismissed, or both: (i) the Roswell application (BPH-850711NQ) was designated for hearing on November 30, 1987, in MM Docket No. 87-542, and was later dismissed on February 16, 1988; (ii) the Corydon application (BPH-851113ME) was dismissed on November 20, 1987; (iii) the Portage application (BPH-851113MF) was designated for comparative hearing on June 24, 1988, in MM Docket 88-346; (iv) the Arlington application (BPH-860123MN) was designated for hearing on July 20, 1988 in MM Docket No. 88-393, and was dismissed on December 5, 1988; (v) the Orlando application (BPH-860505ML) was dismissed on February 8, 1988; (vi) the Goodlettsville application (BPH-861217MY) was *returned* on April 1, 1988; and (vii) the Lynchburg application was designated for comparative hearing on November 8, 1988, in MM Docket No. 88-539 and dismissed on January 30, 1989.[2] Accordingly, Florida shall file an amendment with the presiding Administrative Law Judge, within 30 days of the release of this Order, amending its response to Section II, Item 5 of FCC Form 301 (October 1986) by providing a comprehensive listing of its broadcast interests, and their current status.

5. *Southwest.* Information before the Commission indicates that Southwest was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Oliver Springs, Tennessee	88-201
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party in interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolve these issues. These unresolved issues call into question Southwest's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Southwest in this proceeding.

6. The following applicants have petitioned for leave to amend their applications on the dates specified below. The accompanying amendments were filed after February 28, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Dilucente	April 5, 1988, June 10, 1988, October 17, 1988; March 23, 1989; May 15, 1989; July 12, 1989; August 24, 1989; October 16, 1989
M&M	October 4, 1988; December 1, 1988
Southwest	April 21, 1989; May 31, 1989; June 30, 1989
Harvel	March 10, 1988; August 5, 1988

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Southwest.

2. To determine whether Southwest's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether Southwest possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That, Florida shall file the corrective amendments called for in paragraphs 2 through 4 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Dulucente, M&M, Southwest and Harvel ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Florida's application also mentions the interests of principals Richard Vega and David Larsen. The Vega FM Group, a partnership, is an applicant for a new FM station in Sacramento California (BPH-871110ML). This application was designated for comparative hearing on November 13, 1989, in MM Docket 89-543.

[2] Additionally, we must point out that Florida's application did not mention the current status of other PN applications for : Mexico Beach, Florida (BPH-860505ML), Bay Shore, New York (BPH-850711OK), and Abilene, Texas (BPH-850711OQ). *See PN Radio Company*, DA 87-765, MM Docket No. 87-237 (Hearing Designation Order), released July 9, 1987. The Bay Shore and Abilene applications were dismissed on June 9, 1987 and June 27, 1987, respectively. The Mexico Beach application was pending when Florida's application was filed and was not dismissed until February 8, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-191

In the Matter of

Amendment of Part 94 of the rules regarding point-to-multipoint use of the 2.5, 10.6, and 18 GHz bands by Private Operational Fixed Microwave licensees

Amendment of Part 1 of the rules concerning the general procedures for filing an application in the Private Operational Fixed Microwave Service

REPORT AND ORDER

Adopted: February 8, 1990; Released: March 6, 1990

By the Commission:

I. INTRODUCTION

1. On June 8, 1988, we adopted a *Notice of Proposed Rule Making* (*Notice*) that initiated an examination of our rules governing point-to-multipoint operations in the Private Operational Fixed Microwave Service (OFS).[1] The objectives of our *Notice* were to identify ways to reduce burdens on the public, improve our administrative efficiency, and promote additional uses of the microwave spectrum.[2] In this *Report and Order*, we are adopting new rules consistent with these objectives to provide private microwave users a more flexible regulatory framework. Although the *Notice* in this proceeding addressed OFS operations on the 2.5 GHz H channels, this *Report and Order* will only concern the 10.6 GHz and 18 GHz bands. The proposals relating to the 2.5 GHz H channels will be subsumed into a new proceeding initiated today providing a more detailed analysis of all operations in that band.[3]

II. BACKGROUND

2. Part 94 of our Rules governs the use of frequencies intended to satisfy the needs of private entities for point-to-point and point-to multipoint communications. These stations are not open to public correspondence and generally are operated by and for the sole use of those persons or agencies eligible to operate their own radiocommunication facilities.[4] Point-to-multipoint operations are permitted on frequencies in the 900 MHz, 2.5 GHz, 10.6 GHz, and 18 GHz bands and are used by licensees that need to transfer information between a central fixed location and a number of outlying fixed locations.[5] For example, airlines operate low-power video systems at airports for security monitoring and flight scheduling displays. Local governments use point-to-multipoint frequencies for video conferencing. We also allow licensees in the 2.5 GHz band to distribute video entertainment material directly to their customers, including private residences.[6]

3. While the 2.5 GHz H channels are used mainly for the distribution of video programming, the point-to-multipoint channels in the 10.6 GHz and the 18 GHz bands are available for Digital Termination Systems (DTS). A DTS network typically consists of a central nodal station with associated outlying user stations for the transmission of high speed digital data communications. In the 18 GHz band, OFS has five 10 MHz wide channel pairs available.[7] Construction of 18 GHz DTS networks has been limited, however, primarily because of the lack of equipment. Private use of the 10.6 GHz band for DTS operations is limited, however, because almost all frequencies are occupied in the top 100 markets by common carrier operations.

III. ISSUE ANALYSIS

4. The *Notice* raised many issues and contained numerous proposals regarding private point-to-multipoint operations above 1 GHz. Many more issues and proposals were suggested in the comments filed in response to the *Notice*.[8] We will first consider co-channel and adjacent channel assignment criteria for the 10.6 GHz and 18 GHz bands. We will then discuss the extended and limited DTS network distinction, and the distribution of video entertainment material in the 18 GHz band. Finally, we will discuss low power operations in the 18 GHz band and our proposal for simplifying filing procedures for mutually exclusive applications.

Technical Issues

Co-Channel Protection

5. *Background/Proposal.* The *Notice* proposed to adopt co-channel mileage separations for stations in the 10.6 GHz and 18 GHz bands to reduce licensing burdens in those bands.[9] Currently, applicants for DTS stations in these bands must submit interference analyses showing the effect of the proposed facilities on existing stations (or previously filed applications) located within 50 miles of the proposed operations.[10] We stated that the present criteria are overly conservative and prevent new entry.[11] We proposed to adopt a co-channel separation requirement of 35 miles. This value was chosen because the propagational characteristics of these two bands are such that co-channel stations can reasonably be located closer than stations operating at 2.5 GHz, which have a 50 mile co-channel separation requirement, and still provide a high quality signal.[12] The 35 mile figure applied to stations operating with transmitter antenna heights below 300 feet. For stations operating above 300 feet, we proposed to require interference analyses.[13]

6. We also proposed to allow deviations from these co-channel mileage separation proposals when all affected co-channel licensees concurred.[14] For this purpose, we defined affected co-channel licensees as those located within 12 miles of the proposed station's line-of-sight propagation path for stations in the 10.6 GHz and 18 GHz bands. Finally, we proposed to allow applicants to demonstrate that short-spaced co-channel stations would have little chance of receiving interference because of interven-

ing terrain. In this case, an applicant, in place of concurring statements for co-channel licensees, would have to show that the radio horizon of its proposed station does not intrude upon the coverage area of existing or pending operations.[15]

7. *Comments*. The Association of American Railroads (AAR) states that the proposed separations appear reasonable and should be adopted.[16] API questions whether the proposed 35 mile separation standard for stations in the 10.6 GHz and 18 GHz bands provides sufficient interference protection.[17] Harris states that our proposal for the DTS bands unnecessarily reduces the level of afforded protection and urges the Commission to provide private DTS systems with the same level of protection as common carrier systems.[18] Harris states that because propagation is not uniform throughout the country, it is better to retain the interference analysis requirements for DTS stations than to adopt a standard mileage separation.[19] Finally, Harris urges that we recognize the use of directional antennas as one means of spacing co-channel stations closer than any standard mileage separation that we may ultimately adopt.[20]

8. *Decision*. We adopt standard distance separations as assignment criteria to minimize the burdens on both our licensing staff and applicants. Applications for stations based on such criteria are much easier to prepare and process than those based on applicants supplying detailed engineering analyses. We realize that minimum distance separations do not provide maximum frequency re-use but this is often compensated for by the simplification of the licensing process. In this proceeding, we have proposed co-channel separation criteria for point-to-multipoint OFS operations. As we stated in the *Report and Order* in PR Docket No. 87-5 we believe that using co-channel minimum distance separations in the point-to-multipoint bands is in the public interest because it allows us to license applicants as quickly as possible in view of increasing demand for spectrum and decreasing Commission resources.[21] The same considerations that existed in that proceeding also apply here. We therefore will adopt minimum distance separations for 10.6 GHz and 18 GHz point-to-multipoint channels available under Part 94.[22]

9. Harris and API question if a 35 mile co-channel separation is adequate and suggest that we should continue to use the current assignment criteria. We disagree. Our current assignment criteria are too restrictive, as evidenced by the sparse licensing activity for private DTS operations in the 10.6 GHz band. Our proposal for a 35 mile separation standard would provide an adequate service area of approximately 12 miles and will better accommodate new station entry. We therefore adopt this standard for both bands but will, however, convert the mileage into metric units. This results in a 56 kilometer separation standard for point-to-multipoint stations in the 10.6 GHz and 18 GHz bands with antenna heights below 300 feet (91 meters). For stations that propose antenna heights above 91 meters, we had proposed to require that interference analyses be submitted. Although we received no comments on this issue, we believe that a simpler and less burdensome solution would be to adopt a power reduction table for high antenna height stations (greater than 91 meters above average terrain). This is the same policy we have for 900 MHz MAS systems.[23]

10. Although distance separations increase the efficiency of our processes, our *Notice* realized that unique circumstances must be taken into consideration and therefore proposed to allow short-spacing agreements. While the commenters were silent on this issue, we believe it is important to provide licensees this flexibility and will, therefore, continue to allow the use of short-spaced agreements when all affected licensees and previously filed applicants agree to the new facilities.[24] Further, we will be predisposed to grant as routine requests for waiver of the minimum distance separation requirements when an applicant can demonstrate protection to existing facilities because of intervening terrain. These demonstrations must show either that the proposed radio horizon will not intrude upon the service area of existing facilities (or previously filed applications) or that the co-channel C/I protection ratio is at least 45 dB throughout the entire *de facto* service radius for the co-channel station.[25] This approach will allow applicants to engineer-in stations at locations where propagational anomalies exist and our minimum distance separations over-protect existing stations.

Adjacent Channel Protection

11. *Proposal*. The *Notice* proposed to remove the requirement that applicants for 10.6 GHz and 18 GHz DTS channels submit adjacent channel interference analyses and declined to propose minimum distance separation standards for adjacent channel operations.[26] We did, however, ask whether we should require applicants to certify that they have notified all existing adjacent channel licensees and entities with pending applications where the operation is within the line-of-sight propagation path of the proposed station.[27]

12. *Comments*. API comments that while it understands our motivation for removing the adjacent channel analyses currently required for 10.6 and 18 GHz applications, this proposal has the potential to increase interference.[28] API recommends that we continue to provide some adjacent channel protection but that we reduce the burdens associated with the current rules. API proposes that we require each DTS applicant to provide notice of its intended operations to existing adjacent channel operations or previously filed applications. If any existing licensee or previously filed applicant anticipates interference from the newly proposed system, the new applicant would be required to perform an interference analysis. API believes that this approach would reduce the number of instances where interference analyses would be required and, thus, be less burdensome than the existing rules. The procedures would, however, continue to provide some adjacent channel protection for DTS licensees. AAR states that we should adopt some protection value for adjacent stations in the 10.6 GHz and 18 GHz bands but did not recommend any specific value.[29]

13. *Decision*. We proposed to remove our adjacent channel assignment criteria because we believed that the industry realizes that it is in its best interests to engineer in stations carefully to avoid any interference problems. Given this assumption, we could therefore remove a burdensome requirement on applicants and on our licensing processes. API suggested that one of our alternative proposals, *i.e.*, that applicants be required to notify adjacent channel operations (both existing licensees and entities with pending applications) of their plans to file an application, was a better approach than no criteria at all.

API further develops this idea by stating that the applicant should be required to submit an interference analysis if any of the notified parties object to the application.

14. We agree that this approach would be less burdensome than the present rules and would continue to provide licensees with some level of protection. We shall, therefore, require applicants to certify that they have notified all licensees with existing adjacent channel systems and all applicants for systems located within 56 kilometers of proposed nodal stations. If any of those parties object to the proposed facilities, the applicant will be required to submit an interference analysis. API, however, did not propose C/I protection level for adjacent channel stations, and the current standard of 56 dB is more protection than we proposed to provide co-channel operations in these bands (45 dB). Comments to our *Notice* indicate that 0 dB is adequate protection for the 2.5 GHz band. We believe that 0 dB is also applicable in these bands. We therefore will require that these adjacent channel interference analyses show a protection ratio of 0 dB for 10.6 and 18 GHz OFS stations.

DTS Issues

15. *Proposal.* We currently classify Digital Termination Systems as being part of either extended networks or limited networks.[30] Extended DTS networks must provide service in at least 30 standard metropolitan statistical areas (SMSAs) and are given 60 months to construct. Limited DTS networks provide service in fewer than 30 SMSAs and are given 30 months to construct. We divided the available 10.6 GHz DTS frequencies into two separate pools of frequencies, one for extended networks and one for limited networks.[31] We questioned in our *Notice* whether it is still necessary to continue the limited/extended network distinction.[32] We noted that our original intent was to ensure sufficient spectrum for the creation of nationwide common carrier DTS networks and that we merely adopted the distinction in the private microwave rules for consistency.[33] Arguing that this policy in actuality has little relevance to private DTS networks, we proposed to remove this distinction and allow applicants to apply for any available frequency. We further proposed to amend the construction requirements to provide all private DTS licensees 30 months to construct their systems with provisions for applicants to request extended construction schedules at the time of filing applications.[34] Finally, we proposed to eliminate the requirement that DTS licensees to file 6 month progress reports on the construction of their networks.[35]

16. *Comments/Decision.* AAR supports our proposals to eliminate the distinction between extended and limited private DTS networks and also supports our proposed 30 month construction period for all private DTS systems.[36] Harris also supports our proposals but believes that a construction period of 18 months would be sufficient.[37] We conclude that there is no reason to continue the extended/limited network distinction and, therefore, will remove it from Part 94 of our Rules. Concerning the suggestion of Harris that the period of construction should be limited to 18 months, we agree that systems should be placed into operation as soon as possible to prevent the warehousing of frequencies. Also, we recently adopted the same construction period for common carrier multipoint stations[38] and find that the same length of time is appropriate for private systems. Licensees that do not construct their systems in accordance with their authorizations within 18 months will be subject to automatic license cancellation. We will generally not look favorably upon extension requests. Such requests will generally be granted only if substantial construction has occurred and unique circumstances halt construction. Finally, we note that there was no opposition to our proposal to remove the requirement that DTS licensees file six month progress reports on their construction activities. Because this rule places a paperwork burden on licensees and is of limited usefulness to us, we will no longer require these progress reports.

Video Entertainment in the 18 GHz band

17. *Proposal.* Our *Notice* proposed to expand permissible uses of the DTS channels by no longer requiring them to be used exclusively for transmission of digital data.[39] More specifically, we proposed to allow licensees to distribute video entertainment material directly to their customers using the 18 GHz DTS channels.[40] Distribution of video entertainment material on OFS frequencies is presently limited to the H-channels and frequencies above 21 GHz.[41] We stated that additional frequencies for video delivery may be necessary as we have witnessed increasing interest in such transmissions on frequencies below 21 GHz.[42]

18. We asked whether we should limit the number of 18 GHz frequencies each licensee could receive for video entertainment distribution so that we could achieve an equitable assignment of frequencies.[43] We noted that the 18 GHz DTS channels are actually channel pairs consisting of two 10 MHz channels for two-way transmissions but that most video entertainment distribution systems only transmit in one direction. We asked for comments on what other uses could be made of the second half of the channel pair.[44] We also stated that because most video transmissions occupy less than the available 10 MHz, additional provisions for use of the excess capacity could be necessary and solicited recommendations from the commenters.[45]

19. *Comments.* Most commenting parties did not agree with our proposals to allow the distribution of video entertainment material on the 18 GHz DTS channels. Microband, however, supports our proposal because the channels may one day prove attractive to the "wireless cable" industry, even though no compatible equipment exists today.[46] API states that although it has no objection to allowing video on the DTS nodal station frequencies, the Commission must confine licensees to a 10 MHz bandwidth and to do otherwise would be wasteful of spectrum.[47] AAR states that there are already a plethora of delivery vehicles for video entertainment and that to open up more OFS frequencies for that purpose is unnecessary.[48] Harris believes that the point-to-point channels in the 18 GHz band would be better suited for the delivery of video programming than would the DTS channels.[49]

20. Todd Integrated Systems, Inc. (Todd) notes that we referred to its earlier Petition[50] as an example of the increasing interest in spectrum for the delivery of video entertainment material on frequencies below 21 GHz.[51] Todd operates several satellite master antenna television (SMATV) systems in the New York City area and is seeking spectrum that would allow it to distribute television signals that it receives via satellite to various locations.[52] In its comments, Todd states that our proposal inadequately addresses the SMATV industry's pressing

needs for point-to-point channels. Todd contends that we must issue a further notice of proposed rule making to resolve the entire issue of video entertainment services in the 18 GHz band.[53][54]

21. *Decision.* Providing licensees with flexibility normally increases spectrum efficiency by reducing the chance that spectrum will remain fallow because it is allocated for a narrow purpose that only satisfies the communications needs of a few. Flexibility works best, however, when the channeling plan for the spectrum is itself flexible enough to accommodate the varying requirements of different modulation techniques. In this proceeding, we have proposed to allow video transmissions on 10 MHz wide channel pairs although most video transmissions employing amplitude modulation generally require only 6 MHz of bandwidth. Because video entertainment transmissions are not consistent with the DTS channeling plan, we conclude that allowing video entertainment material on the 18 GHz DTS channels is not in the public interest and, therefore, decline to adopt this proposal. We will, however, adopt our proposal to allow licensees to transmit non-digital communications on these channels.[55] Although we anticipate that most communications will be in the digital mode, non-digital applications could occupy these channels in an efficient manner. We therefore will remove the "digital-only" restriction from the 10.6 GHz and 18 GHz point-to-multipoint channels but will continue to prohibit the distribution of video entertainment material on these channels.

22. Most commenters supporting additional provisions for the distribution of video entertainment material were SMATV operators expressing their need for point-to-point video links. Many of these parties urged us to issue a further notice of proposed rule making to explore the specific proposals contained in the Todd Petition. We recently adopted a *Notice of Proposed Rule Making* addressing the issues raised in that petition.[56]

18 GHz Low Power Systems.

23. *Proposal.* In our proposal to allow video transmissions on the 18 GHz channels, we noted that most video delivery systems are one-way circuits and would only require the use of one half of the channel pair.[57] We asked commenters to address possible uses for the vacant half of the channel pair and specifically asked commenters to address interference criteria and licensing issues.[58] In response to this request, Motorola proposes that we permit systems using multiple low power point-to-multipoint transmitting devices on the 18 GHz DTS channels.[59] This would allow a licensee to cover its defined area of operation by using either one high-powered transmitter or multiple low power transmitting devices. Specifically, Motorola proposes to operate multiple low-power wireless in-building transmitters to support radio local area networks[60] and states that such systems could operate on either the vacant channel of a one-way video system or on both halves of the channel pair.[61]

24. Motorola states that we should license low power system operators as if they were a full power DTS licensee by authorizing such licensees to operate over a defined service area measured from reference coordinates.[62] Licensees would then be able to establish any number of low-power transmitting devices within the defined area of operation.[63] In its comments, Motorola states that low-power transmitting devices, limited in power to 100 milliwatts peak output, could operate over 23 miles from their associated reference coordinates and would not cause harmful interference to any co-channel operations located at the minimum required separation, 35 miles.[64]

25. On a related issue, Motorola asks that we allow for-profit transfers of unconstructed 18 GHz DTS authorizations in order to hasten the introduction of new operations on these frequencies. Motorola states that the broad-scale licensing activity of this band has not been accompanied by comparable activity in construction or implementation of systems.[65] Because many 18 GHz DTS licensees have until 1991 to construct, Motorola fears that these frequencies will remain idle until they are recovered by the Commission and made available to other users. Motorola claims that allowing the transfer of unconstructed DTS authorizations would expedite the departure of licensees who will otherwise remain inactive until their licenses expire.

26. *Decision.* API addressed Motorola's proposal in reply comments and states that it supports putting DTS spectrum to beneficial use in a way that is compatible with the needs of industry for rapid information transfer.[66] This proposal would provide licensees the flexibility to use multiple low power point-to-multipoint transmitters within a given area instead of a single high-power transmitter. Such operations would not have any more preclusive effect on other co-channel 18 GHz operations than would high power DTS stations and, indeed, such systems could be accomplished under existing rules. If a DTS licensee wished to operate multiple low power transmitters within its service area it could file applications to receive authority to operate each low-power nodal station. These applications would have to show protection to existing co-channel stations even though, most likely, the only co-channel operations that would need to be protected would be those for which the applicant is already licensed.[67] Implementing operations similar to Motorola's proposal under these licensing requirements would prove unnecessarily burdensome for both the applicant and the Commission.

27. We therefore conclude that it is in the public interest to minimize licensing burdens for licensees that wish to operate multiple low-power systems and will therefore license both high power and low-power systems through essentially the same process.[68] Specifically, applicants seeking authority to operate multiple low power devices would file a single application specifying a reference coordinate that defines the center of their proposed service areas. If granted, licensees would be permitted to locate multiple low power devices within a certain radius from the reference coordinate without need for additional coordination.[69] For assignment purposes, these operations will be subject to the same 56 kilometer (35 miles approximately) co-channel separation requirement adopted in this proceeding as measured from the center reference coordinate. This point-radius type of licensing, which specifies a center of service area for re-use criteria even though no master station need be located at that particular point, is similar to that used for multiple address mobile systems.[70]

28. Motorola states that a low power system located 35 miles from a co-channel high power DTS system could operate stations 23 to 28 miles from its center reference figure and still provide co-channel protection on the order of 45 dB. Although we agree that these very low-power devices will provide a high degree of co-channel interference protection, allowing low-power transmitters

to operate between 23 and 28 miles from their center reference coordinates would result in two competing co-channel systems operating within each other's service area. Until we gain more experience with these operations, we will not allow low power systems to have service areas overlapping those of adjacent systems. Because the minimum separation standard for this band is 56 kilometers, our worst case scenario would be to provide low-power system operators with a service radius of 28 kilometers from their center reference coordinates. This requirement will minimize co-channel interference to overlapping service areas.

29. We will limit low-power systems to one watt peak EIRP and 100 mW transmitter output power. Also, the very low power of these devices obviates the requirement for directional antennas. We, therefore, will allow the use of omnidirectional antennas for these systems. Motorola recommends that low power transmitters operating in this band should be required to maintain a frequency tolerance of .001%. That value is consistent with present values and will be adopted. Further, in an oral *ex parte* presentation that is part of this proceeding's record, Motorola indicates that the current emission mask for the 18 GHz band is inappropriate for low power transmitters because it would limit channel throughput and frequency re-use and suggests a new emission mask that provides a more gradual reduction of out-of-band emissions than the present mask. Because these transmitters would operate at much lower power levels than those normally associated with 18 GHz equipment, it is appropriate to consider a new mask. The mask proposed would provide sufficient protection to adjacent channel operations while allowing for higher data rates and would result in low power operations having significantly reduced out-of-band power levels than the current mask does for high power DTS operations. We therefore will adopt a new emission mask for low power 18 GHz multipoint operations as shown in new Section 94.88 of the attached appendix.

30. Finally, concerning Motorola's recommendation that we allow the assignment of unconstructed authorizations, we note that many existing 18 GHz DTS authorizations face construction deadlines in 1990. If these stations remain unconstructed, they will be recovered through normal enforcement actions and made available to other interested entities. Motorola's suggestion that we allow the assignment of unconstructed 18 GHz DTS authorizations, therefore, is unnecessary to foster the redistribution of these channels. We therefore decline to allow the assignment of unconstructed authorizations.

Reduced Filing Period For Mutually Exclusive Applications

31. *Proposal.* We currently provide public notice of an OFS application approximately ten days after it is filed.[71] Interested parties are provided thirty days from the public notice date to file petitions to deny.[72] Further, applications received during this thirty day period that are electrically incompatible with the applications on public notice are treated as mutually exclusive, and disposition of the applications is consolidated into one process.[73] We proposed to modify this procedure by considering as mutually exclusive only electrically incompatible applications that are filed on the same day.[74] This would result in our processing OFS applications on a first-come, first-served basis unless two (or more) applications were received on the same day for the same frequency in the same area. We reasoned that this change would improve our administrative efficiency by reducing the number of instances involving complicated exclusivity issues.[75] Further, we noted that the Communications Act requires us to allow thirty days for the filing of petitions to deny but gives us broad latitude to develop mutual exclusivity criteria, provided that we apply them equally among applicants.[76]

32. *Comments.* API is the only commenter that addresses this issue in detail. API states that we are overreacting to a few isolated instances where a large number of competing applications over-burdened our licensing staff.[77] API further states that although the proposal appears to simplify licensing matters, any new process introduces complexities that need time to remedy.[78] API raises several scenarios that depict the ramifications in terms of time and money an applicant would lose if it were to unknowingly file an application the same day as another applicant and not receive the authorization.[79] API also believes that our proposal would stimulate additional filings as potential applicants would risk having planned communication facilities frustrated by an electrically incompatible application filed only one day earlier.[80] In conclusion, API states that we should limit the use of the so-called one day filing window to situations where we can logically expect a large number of mutually exclusive applications, such as when applications are initially accepted for "new" spectrum.[81]

33. *Decision.* As discussed below, we do not find API's arguments persuasive and continue to be convinced that adopting a first-come, first-served process for OFS applications is in the public interest.[82] This change will significantly reduce the need for lotteries. This will in turn benefit the public by improving our speed of service. It is fair to grant authorizations to the most diligent applicant, particularly when there are generally no material differences between mutually exclusive OFS applications. Allowing the filing of competing applications without invoking any comparative criteria for evaluating the applications invites the filing of speculative applications. Indeed, we have seen cases where parties have photocopied previously filed applications merely to gain standing in a mutually exclusive proceeding. Our licensing policies should not encourage such activities. Although this change may result in some applications that were prepared in good faith being returned due to the existence of a mutually exclusive application filed one day earlier, this result is not inherently unfair. It is merely a cost of doing business and is ultimately no different than losing a potential authorization in a lottery situation to an application filed twenty-nine days later.

34. API also suggests, however, that our proposal may increase the instances where applicants abuse our licensing process by continually filing modifications to applications and thus precluding new filings in various areas.[83] We are unconvinced that API's scenario is very likely as we can not see an applicant receiving any benefit from continually modifying its application. Nonetheless, any such egregious or flagrant abuse of our licensing process can be addressed under the current rules. API further argues that the one day period for the filing of mutually exclusive applications will stimulate additional filings. We find this statement more speculative than factual and, therefore, are not persuaded to withdraw our proposal. In summary, we believe that the one day period for filing mutually exclusive applications is in the public interest

because it will allow us to process applications more expeditiously and fairly.

IV. FINAL REGULATORY ANALYSIS

35. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This *Report and Order* reviews the rules and standards for point-to-multipoint operations in the Operational Fixed Microwave Service. These rules and standards were originally derived years ago, before we had any practical experience in regulating such services. The new rules and standards adopted in this proceeding reflect our increased experience in regulating these services, as well as changes in the state of the art developed by the industry.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

The *Notice of Proposed Rule Making* in this proceeding offered many proposals. The commenters supported the basic thrust of this proceeding, with many suggesting modifications to the Commission's proposals. Our proposal to allow the delivery of video entertainment material in the 18 GHz band was discussed by many commenters who stated that this would be an inappropriate use of the spectrum and others stated that the Commission's proposal did not go far enough to meet the needs of the satellite master antenna television (SMATV) industry. Upon review, we determined that this instant proposal was not an efficient use of the spectrum and that the needs of the SMATV industry is being addressed in a separate proceeding.

V. PAPERWORK REDUCTION ACT STATEMENT

36. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase burden hours imposed on the public.

VI. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 94 of the Commission's Rules, 47 C.F.R. Part 94, IS AMENDED as set forth in Appendix B below.

38. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

COMMENTERS:

1. Connecticut Public Broadcasting, Arizona State University, and New Jersey Public Broadcasting Authority
2. Motorola, Inc.
3. Telecommunications Research and Action Center and National Association for Better Broadcasting
4. Todd Integrated Systems
5. American Petroleum Institute
6. University of Maryland - Baltimore County
7. Association of American Railroads
8. Manufacturers Radio Frequency Advisory Committee
9. National ITFS Association
10. National Association of Public Television Stations
11. Leland Stanford Junior University
12. Microband Companies, Inc.
13. Aerospace & Flight Test Radio Coordinating Council
14. Digital Microwave Corporation
15. Harris Corporation
16. Community Telecommunications Network
17. Video Consultants, Inc.
18. Association for Continuing Education

Reply Comments:

1. Hughes Aircraft
2. Microband Companies, Inc.
3. Motorola, Inc.
4. University of Maryland - Baltimore County
5. Harris Corporation
6. Association of American Railroads
7. Todd Integrated Systems
8. American Petroleum Institute
9. Community Telecommunication Network
10. Indiana Higher Education Telecommunications System

APPENDIX B

Title 47 of the Code of Federal Regulations, Parts 1 and 94, are amended to read as follows:

I. Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4, 303, 48 STAT. 1066, 1082 as amended; 47 U.S.C. 154, 303; implemented by 5 U.S.C. 552, unless otherwise noted.

2. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (*See* § 1.972). An application which is substantially amended, (as defined by § 1.962(c)), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment. Except for applications filed under Part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at Part 1, Subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, except for applications filed for frequencies identified in § 94.65(f), mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. For applications filed for frequencies identified in § 94.65(f), mutual exclusivity will occur if the later application(s) are received by the Commission's offices in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission.

* * * * *

II. Part 94 - Private Operational-Fixed Microwave Service

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 STAT., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. The table of contents in Part 94 is amended by removing reference to Subpart F.

3. Section 94.3 is amended by removing the definitions for Extended Network and Limited Network, revising the definition for Internodal Link, and adding a definition for Nodal Station to read as follows:

§ 94.3 Definitions.

* * * * *

Internodal Link. A point-to-point communications link used to provide communications between Nodal Stations or to interconnect Nodal Stations to other communications media.

* * * * *

Nodal Station. The central or controlling station in a radio system operating on point-to-multipoint frequencies in the 2.5, 10.6, and 18 GHz bands.

* * * * *

4. Section 94.15 is amended by revising paragraph (i) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(i) Licensees and applicants for the point-to-multipoint channels in the 10.6 GHz and 18 GHz bands are not subject to the provisions of paragraphs (a) through (h) of this section.

* * * * *

5. Section 94.25 is amended by removing the word [Reserved] in paragraph (e) and adding the following text to read as follows:

§ 94.25 Filing of applications.

* * * * *

(e) Applications for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands:

(1) A separate application form must be filed for each Nodal Station except for operations consistent with § 94.88. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(2) If proposing a Digital Termination System, all applicants must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data

throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

* * * * *

6. Section 94.51 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 94.51 Time in which station must be in operation.

(a) Except as provided in paragraphs (b) and (c) of this section, a station authorized under this Part must be in operation within 12 months from the date of grant or the authorization cancels automatically and must be returned to the Commission. Requests for extension may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed 12-month period. Such requests must be submitted no later than 30 days prior to the end of the 12-month period to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

(b) Stations licensed on point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be completely constructed and fully operational in accordance with their most recent application within 18 months of grant, or the authorizations for stations not meeting the above cancel automatically and must be returned to the Commission.

(c) Stations authorized under § 94.93 must be in operation within 36 months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

7. Section 94.61(b) is amended by revising footnote 24 to read as follows:

94.61 Applicability

* * * * *

(b) * * *

[24] Frequencies in this band are shared with the Common Carrier services for Digital Termination Systems. The available frequencies are indicated in § 94.65.

* * * * *

8. Section 94.63 is amended by revising paragraphs (a) and (b), and adding new paragraphs (d)(6) and (d)(7) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 6,425-6,525 MHz, 10,550-10,680 MHz, 17,700-19,700 MHz, 21,200-21,800 MHz, 22,400-23,000 MHz, or 38,600-40,000 MHz, applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter, however, certain frequencies in the 10,550-10,680 MHz and the 17,700-19700 MHz bands shall instead abide by the criteria specified in § 94.63(d)(6). In addition, when the proposed facilities are to be operated in the 2655-2690 or 12,500-12,700 MHz bands, applicants shall also follow the procedures in § 21.706(c) and (d) and the technical standards and requirement of Part 25 of this chapter as regards to licensees in the Communication-Satellite Service. *See* also § 94.77.

(b) The interference protection criteria for operational-fixed stations, other than those licensed on frequencies set out in §§ 94.65(a)(1), 94.65(i)(1), 94.65(j)(8), 94.90, and 94.91 are as follows:

* * * * *

(d) * * *

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band and all point-to-multipoint channels in the 18 GHz band shall demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicants proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case shall EIRP exceed 70 dBm on the 10.6 GHz channels.

AAT (in meters)	EIRP dBm
Above 300	+38
251-300	41
201-250	43
151-200	49
101-150	55
100 and below	85

(7) Each application for new or modified nodal station on channels numbered 21, 22, 23, and 24 in the 10.6 GHz band shall include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel station located within 80 kilometers of the location of the proposed station. The criteria contained in § 94.63(d)(3) shall be used in this analysis. Applicants must certify that copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 94.63(d)(3) within 5 days of the date the subject application is filed with the Commission.

* * * * *

9. Section 94.65 is amended by revising paragraph (i), the introductory text of paragraph (j) and adding (j)(8) to read as follows:

§ 94.65 Frequencies

* * * * *

(i) 10,550-10,680 MHz

(1) The following frequencies are available for point-to-multipoint digital terminations systems.

Channel No.	Nodal Station Frequency band limits MHz	User Station Frequency band limits MHz
4A	10,580.0-10,582.5	10,645.0-10,647.5
4B	10,582.5-10,585.0	10,647.5-10,650.0
19	10,585.0-10,587.5	10,650.0-10,652.5
20	10,587.5-10,590.0	10,652.5-10,655.0
21	10,590.0-10,592.5	10,655.0-10,675.5
22	10,592.5-10,595.0	10,657.5-10,660.0
23	10,595.0-10,597.5	10,660.0-10,662.5
24	10,597.5-10,600.0	10,662.5-10,665.0
7	10,605.0-10,607.5	10,670.0-10,672.5
9	10,610.0-10,612.5	10,675.0-10,677.5

(i) Each station will be limited to one frequency pair per SMSA. An additional channel pair may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. The channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 94.63 are met.

(2) The following frequencies are available for point-to-point operations.

(i) 2.5 MHz bandwidth

Transmit (receive) MHz	Receive (transmit) MHz
10,551.25	10,616.25
10,553.75	10,618.75
10,556.25	10,621.25
10,558.75	10,623.75

(ii) 1.25 MHz bandwidth

Transmit (receive) MHz	Receive (transmit) MHz
10,560.625	10,625.625
10,561.875	10,626.875
10,563.125	10,628.125
10,564.375	10,629.375

(j) 17700-19700 MHz. (Note: stations authorized as of September 9, 1983 to use frequencies in this band may, upon proper application, continue to be authorized for such operations.)

* * * * *

(8) The following frequencies are available for point-to-multipoint systems:

Channel No.	Nodal Station Frequency band (MHz) limits	User Station Frequency band (MHz) limits
25	18,820-18,830	19,160-19,170
26	18,830-18,840	19,170-19,180
27	18,840-18,850	19,180-19,190
28	18,850-18,860	19,190-19,200
29	18,860-18,870	19,200-19,210

(i) Each station will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 94.63 are met.

* * * * *

10. Section 94.73 is amended by revising footnote 6 to read as follows:

§ 94.73 Power limitations

(a) * * *

[6] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall

not exceed the authorized power by more than 10 per cent of the authorized power in watts at any time.

* * * * *

11. Section 94.75 is amended by revising footnote 3 and adding a new paragraph (h) to read as follows:

§ 94.75 Antenna limitations

* * * * *

[3] Except as provided for in paragraph (h) of this section.

* * * * *

(h) Antenna standards for point-to-multipoint channels in the 10.6 GHz and 18 GHz bands excluding operations under § 94.88.

(1) Nodal transmitting antennas may be omnidirectional or directional, consistent with coverage and interference requirements.

(2) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization must be used to minimize harmful interference between stations.

(3) Directive antennas shall be used at all user stations and shall be elevated no higher than necessary to assure adequate service. The user station antennas shall meet the performance standards as specified in Section 21.208(c) and have a minimum power gain of (1) 34 dBi in the 10,550-10,680 MHz band and (2) 38 dBi in the 17,700-19,700 MHz band. User antenna heights shall not exceed the height criteria of Part 17 of this Chapter, unless authorization for use of a specific maximum antenna height (above ground and above sea level) for each location has been obtained from the Commission prior to the erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (*See* Part 17 of this chapter concerning the construction, marking and lighting of antenna structures).

12. A new Section 94.88 is added to read as follows:

§ 94.88 Special provision for low power systems in the 17,700 - 19,700 MHz band.

(a) Notwithstanding other provisions in this Rule Part, licensees of the five point-to-multipoint channel pairs listed in § 94.65(j)(8) may operate multiple low power transmitting devices within a defined service area. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are subject to the following requirements on the low power transmitting devices:

(1) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power.

(2) A frequency tolerance of .001% must be maintained.

(3) The mean power of emissions shall be attenuated in accordance with the following schedule: In any 4 kHz band, the center frequency of which is removed from the frequency of the center of the DTS channel by more than 50 percent of the DTS channel bandwidth up to and including 50 percent plus 500 kHz: as specified by the following equation but in no event be less than 50 + 10 $\log_{10}$ N decibles.

$A = 35 + .003(F-0.5B)$ Db

Where

A = Attenuation (in decibles) below output power level contained within the DTS channel for a given polarization.

B = Bandwidth of DTS channel in kHz.

F = Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the DTS channel in kHz.

N = Number of active subchannels of the given polarization within the DTS channel.

13. Part 94 is amended by removing Subpart F in its entirety.

FOOTNOTES

[1] *See* Notice of Proposed Rule Making, PR Docket No. 88-191, 3 FCC Rcd 3532 (1988) (*Notice*). The Private Operational Fixed Microwave Service is defined in Part 94 of the Commission's Rules, 47 C.F.R. Part 94.

[2] *See Notice* at para. 4.

[3] *See* Notice of Proposed Rule Making and Notice of Inquiry, Gen Docket No. 90-54, adopted February 8, 1990.

[4] *See* 47 C.F.R. § 94.3. *Cf.* First Report and Order, PR Docket No. 83-426, 57 RR 2d 1486 (1985), *modified on reconsideration*, 59 RR 2d 1471 (1986) (authorizing leasing of system capacity by OFS licensees to Part 94 eligibles).

[5] This proceeding did not address 900 MHz point-to-multipoint stations because the Commission recently reviewed rules pertaining to such stations in PR Docket No. 87-5. *See* Report and Order, PR Docket No. 87-5, 3 FCC Rcd 1564 (1988), recon. granted in part, 4 FCC Rcd 2491 (1989).

[6] *See* Report and Order, Docket No. 19671, 86 FCC 2d 299 (1981), and Memorandum Opinion and Order, Docket No. 19671, 99 FCC 2d 715 (1983).

[7] *See* 47 C.F.R. § 94.189(f).

[8] A complete list of parties filing comments in this proceeding is attached in Appendix A. Although we are discussing in this Report and Order all remaining issues associated with this proceeding, we will leave the docket file in an open status so that comments relevant to the 2.5 GHz H channels may be reviewed by the public. We will terminate this proceeding when we terminate Gen Docket No. 90-54 (*see* note 3, *supra*).

[9] *Id.* at para. 14.

[10] *See* 47 C.F.R. § 94.193(b).

[11] *See Notice* at para. 8.

[12] *Id.* at para. 14.

[13] *Id.* at note 12.

[14] *Id.* at para. 15.

[15] *Id.*

[16] Comments of AAR at 2.

[17] Comments of API at 12.

[18] Comments of Harris at 3.

[19] *Id.* at 5.

[20] *Id.* at 6.

[21] *See* Report and Order, PR Docket No. 87-5, 3 FCC Rcd 1569, para. 45 (1988).

[22] There are four channel pairs in the 10.6 GHz band (channels 21, 22, 23, and 24) that are available for use under both Parts 21 and 94 on a co-primary basis. At this time, we will not modify the assignment criteria for these four channel pairs because that would result in the two services assigning stations on the same channels under different standards.

[23] *See* 47 C.F.R. § 94.65(a)(1)(iv).

[24] For this purpose, we will define an affected licensee, or applicant, as one that is located within 56 kilometers of the proposed 10.6 GHz or 18 GHz nodal station.

[25] The *de facto* service area for 10.6 GHz and 18 GHz stations extends 19 kilometers from the nodal stations. Although remotes may be located beyond 19 kilometers from their associated base stations, they do not receive any interference protection.

[26] *Notice* at para. 20.

[27] *Id.* at para. 22.

[28] Comments of API at 15.

[29] Comments of AAR at 3.

[30] *See* 47 C.F.R. § 94.189.

[31] *Id.*

[32] *See Notice* at para. 30.

[33] *See Notice* at para. 30.

[34] *Id.* at para. 34.

[35] *Id.*

[36] Comments of AAR at 4.

[37] Comments of Harris at 7.

[38] Report and Order, CC Docket No. 86-128, 2 FCC Rcd 5713 (1987).

[39] *See Notice* at para. 36.

[40] *Id.* at para. 35.

[41] *See* 47 C.F.R. § 94.09.

[42] *See Notice* at para. 35.

[43] *Id.* at para. 37.

[44] *Id.*

[45] *Id.*

[46] Comments of Microband at 7.

[47] Comments of API at 16.

[48] Comments of AAR at 6.

[49] Comments of Harris at 8.

[50] Petition for Rule Making, RM 6014, filed June 8, 1987 by Todd Integrated Systems, Inc. (Todd Petition).

[51] Comments of Todd at 2.

[52] *See* Todd Petition, RM-6014 at 2.

[53] Comments of Todd at 6.

[54] The comments of Telecommunications Research and Action Center and National Association of Better Broadcasting (TRAC/NABB) raise a separate point regarding video programming. TRAC/NABB state that they "understand" that OFS "can be employed to deliver video programming to an unlimited number of receive points, and thus is capable of carrying programming primarily intended for the general public." TRAC/NABB Comments at 1-2. TRAC/NABB argue that the Commission "must consider whether OFS can be, or is being, used for 'broadcasting'" within the meaning of the Communications Act. *Id.* at 2. If OFS service is being used for broadcasting, TRAC/NABB argue that the Commission must establish a structure for regulating OFS licensees as broadcasters. If OFS service is not being used for broadcasting, they argue that the Commission "must create a self-executing system for learning when an OFS licensee commences to use OFS for broadcast purposes." *Id.*

Terrestrial broadcasting is not permitted in the 2.5 GHz or 18 GHz bands. *See* 47 C.F.R. § 2.106. OFS transmission of video programming is thus permitted on a subscription basis only. *See First Report and Order* in Docket No. 19671, 86 FCC 2d 299, 309-310 (1981), *on reconsideration*, 99 FCC 2d 715 (1983). Such service is not broadcasting within the meaning of the Communications Act. *National Association for Better Broadcasting v. FCC*, 849 F.2d 665 (D.C. Cir. 1988), *rehearing denied* (Feb. 16, 1989). Obviously, there is no need for the Commission to establish a regulatory structure for prohibited uses of OFS. Moreover, we are not aware of any such prohibited use of OFS and have no reason to expect that OFS licensees will engage in prohibited uses in contravention of our rules. If we were to receive evidence from TRAC/NABB or any other source that any OFS licensees are transmitting video programming on a non-subscription basis, such licensees would, of course, be subject to enforcement action.

[55] *See Notice* at para. 36.

[56] Notice of Proposed Rule Making, PR Docket No. 90-5, 55 Fed. Reg. 3241 (1990).

[57] *See Notice* at para. 37.

[58] *Id.*

[59] Comments of Motorola at 3.

[60] Radio local area networks (RLANs) allow personal computers, or other desk-top communications devices, to be connected to a central computer located on the same floor without the need for hard wiring. We previously addressed allocating spectrum for RLANs in the 1700 MHz band. Notice of Proposed Rule Making, PR Docket No. 86-174, 51 Fed. Reg. 19750 (1986). When that band proved unavailable, we requested the public to submit alternative spectrum proposals. Report and Order, PR Docket No. 86-174, 4 FCC Rcd 7654 (1988).

[61] Comments of Motorola at 3.

[62] *Id.* at 5.

[63] *Id.*

[64] *Id.* at 10.

[65] *Id.* at 1.

[66] Reply comments of API at 6.

[67] Section 94.63(d)(4)(ii) of our Rules requires such short-spaced licensees to conduct engineering analyses and to obtain a statement from the short-spaced licensees agreeing to accept the calculated levels of interference.

[68] We are only adopting minimal rule changes here to better accommodate the use of multiple low power transmitter systems. We will monitor the development and introduction of these systems to determine whether future refinement in necessary.

[69] Section 94.65(j)(8)(i) in the attached appendix (previously § 94.189(b)) states that applicants requesting more than one DTS channel pair in a given area must show that the requested spectrum will be fully utilized. We note that this would be a difficult showing for operators of low-power multiple transmitter systems requesting authority to operate on more than one channel pair in a specific area.

[70] *See* 47 C.F.R. § 94.63(d).

[71] *See* 47 C.F.R. §§ 1.962, 94.33.

[72] 47 C.F.R. § 1.962.

[73] 47 C.F.R. § 1.227.

[74] *Notice* at para. 38.

[75] *Id.*

[76] *Id.* at para. 39. Paragraph (b) of Section 309 of the Communications Act, 47 U.S.C. § 309(b), provides that no application for a fixed microwave station shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application. Paragraph (d) of Section 309 provides interested parties the authority to file a petition to deny against any application to which paragraph (b) applies.

[77] Comments of API at 4.

[78] *Id.*

[79] *Id.* at 6.

[80] *Id.* at 8.

[81] *Id.* at 9.

[82] Although our proposal was intended to apply to all private microwave applications, we will defer application of these new rules to the 2.5 GHz H channels pending the resolution of Gen Docket No. 90-54 (*see* note 1 *supra*). We will therefore continue to process applications for the H channels under present procedures.

[83] *Id.* at 7. API notes that 47 C.F.R. §§ 1.962(c) and 1.227(b) provide that a requested major modification to a previously filed application must be treated as a new application. API postulates that applicants could continually make such major amendments to applications in order to prevent the filing of new applications in various areas.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-523

In re Applications of

CR BROADCASTING, INC. File No. BPH-870918ME

SAGA COMMUNICATIONS OF ILLINOIS, INC. File No. BPH-870918MS

DANIEL S. STRATEMEYER File No. BPH-870918MZ

For Construction Permit for a
New FM Station on Channel 271B1
Mt. Vernon, Illinois

Appearances

James F. Freeman and Mary V. Huff, Esqs. (Reed Smith, Shaw and McClay) on behalf of CR Broadcasting, Inc.; *Allan G. Moskowitz, and Bruce A. Eisen, Esqs.* (Kaye, Scholer, Fierman, Hays and Handler) on behalf of Saga Communications of Illinois, Inc.; *Clifford M. Harrington, Kathryn R. Schmeltzer and John Joseph McVeigh, Esqs.* (Fisher, Wayland, Cooper and Leader) on behalf of Daniel S. Stratemeyer; and *James W. Shook, Esq.* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ACTING CHIEF ADMINISTRATIVE LAW JUDGE JAMES F. TIERNEY

Issued: February 26, 1990; Released: March 6, 1990

PRELIMINARY STATEMENT

1. This proceeding concerns the mutually exclusive applications of four original parties for the captioned facilities at Mt. Vernon, Illinois. By *Memorandum Opinion and Order*, FCC 89M-2701, released November 24, 1989, the application of Bryan Davidson for the stated reasons was dismissed with prejudice. The remaining parties applicant are CR Broadcasting, Inc. (CR), Saga Communications of Illinois, Inc. (Saga) and Daniel S. Stratemeyer (Stratemeyer).

2. The *Hearing Designation Order (HDO)*, 53 Fed. Reg. 48721, released November 21, 1988, designated for consolidated comparative hearing the respective applications on the following issues:

a. To determine whether the proposal of CR would provide coverage of the city sought to be served, as required by 47 CFR Section 73.315(a) and, if not, whether circumstances exist which warrant the waiver of that Section.

b. To determine whether there is a reasonable possibility that the tower height and location proposed by Stratemeyer would constitute an hazard to air navigation.

c. To determine which of the proposals would, on a comparative basis, best serve the public interest.

d. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

3. By *Order*, FCC 89M-1393, released May 9, 1989, Stratemeyer's unopposed Motion for Summary Decision and Petition for Leave to Amend addressed to resolution of the air hazard issue was granted.

4. A prehearing conference was held on January 27, 1989; the hearing was held May 23, 1989 and the record was closed on that date. Subsequently, a Petition to Enlarge Issues against Davidson was filed by Stratemeyer on June 14, 1989 was granted in *Memorandum Opinion and Order*, FCC 89M-2044, released August 9, 1989, and the following issue was added to this proceeding:

To determine whether Bryan Davidson misrepresented facts, was lacking in candor, or was grossly negligent in certifying to the FCC in connection with his LPTV applications that he had no other media interests; and whether under the evidence adduced, Bryan Davidson possesses the qualifications to be a Commission licensee in this proceeding.

The burden of proceeding with the introduction of *evidence* under the added issue was assigned to Stratemeyer and the burden of proof assigned to Davidson. These record was REOPENED at this point.

5. A further prehearing conference to consider and determine procedural arrangement following the added Davidson issue was held on September 19, 1989; hearing on that issue was held November 15, 1989 when the record was again closed. As noted above, on November 24, 1989, the Davidson application was dismissed, with prejudice.

6. Proposed Findings and Conclusions were filed by the parties applicant and the Chief, Mass Media Bureau (Bureau), on July 31, 1989. In order to consider and complete the matters under the Davidson added issue, Reply Findings by the parties so choosing were suspended. On December 7, 1989 Saga filed Reply Findings and on December 11, 1989 Stratemeyer filed Reply Findings. CR by letter dated December 12 advised that it would not file Reply Findings.

7. Saga filed an unopposed Petition for Leave to Amend its application on January 19, 1990 reporting an application for a new broadcast facility. Good cause appearing, the Petition IS GRANTED and the amendment tendered therewith ACCEPTED.

8. A further unopposed Petition for Leave to Amend his application was filed by Stratemeyer on February 8, 1990 reflecting the tendering of a new broadcast application by his brother. Good cause appearing, the Petition IS GRANTED and the amendment tendered therewith ACCEPTED.

9. For the reasons hereinafter, this, as an Initial Decision, SHALL GRANT the application of Daniel S. Stratemeyer.

Findings of Fact

City Grade Issue (CR)

10. This issue was designated because CR's application provided service to only 22.3% of Mt. Vernon (*HDO* - para. 1). CR had requested a waiver of Rule 73.315(a) (city coverage) arguing that the shortfall was the result of a site restriction imposed to protect Station WRDW(FM), Eldorado, Illinois, an argument rejected by the Commission, noting that:

> CR has not provided circumstances which warrant waiver of Section 73.315(a) of the Rules, particularly in light of all other applicants securing sites from which short-spacing with other stations would not occur and from which at least 80 precent of city grade would be provided (*Id.*)

11. CR initially sought to address this issue by seeking leave to amend its technical proposal, which was later denied. CR again addressed Issue 1 in its Direct Case by requested official notice of the engineering exhibit submitted with its original September 18, 1987 application which contained the initial request for waiver of Section 73.315(a). According to CR, this document reflects an "erroneous assumption as to the necessary location of the transmitter site" (CR Ex. 2). Then, CR requested official notice of its January 3, 1989 amendment which had been rejected by *Memorandum Opinion and Order*, FCC 89M-200, released January 19, 1989. CR admitted that it was "not offering additional evidence on this issue." (*Id.*)

Comparative Coverage

12. CR's proposal will provide a field strength of 3.16 mV/m to 22.3% of Mt. Vernon. CR claims that it is impossible to locate its transmitting antenna at a site which will provide greater coverage of Mt. Vernon because of a site restriction imposed to protect WRDW(FM), Eldorado, Illinois (CR Ex. 2). CR does not dispute that Saga and Stratemeyer have each chosen a site which provides adequate coverage to Mt. Vernon and which complies with the Commission's spacing requirements.

13. More particularly, the evidence reflects that the areas and populations within the surviving applicants' 1 mV/m contours (Jt. Ex.) ranked from the highest to the lowest in terms of population.

Total Areas and Populations

Applicant	Area (sq. km.)	Population
Saga	4,657	114,055
Stratemeyer	4,657	114,055
CR	4,757	99,225

14. All proposed service areas presently receive five or more aural services during daytime hours (Jt. Ex. p. 2).

15. The following table shows the availability of other services at night (Jt. Ex.).

Nighttime Aural Services
Existing Services to Total Area
Area (sq. km.)

Applicant	5 or more	4	3	2	1
Saga	651	1,426	1,427	1,153	0
Stratemeyer	651	1,426	1,427	1,153	0
CR	786	1,611	1,508	852	0

Population

Applicant	5 or more	4	3	2	1
Saga	11,242	48,973	31,774	22,066	0
Stratemeyer	11,242	48,973	31,774	22,066	0
CR	1,574	48,475	33,095	16,081	0

Comparative Issue

Daniel S. Stratemeyer

16. Daniel S. Stratemeyer is an individual applicant, who owns and controls his own application and will own and operate the proposed Mt. Vernon facility as a sole proprietor (Stratemeyer Ex. 1).

17. Stratemeyer is presently the Vice President, Director, and the 49% shareholder of Union Broadcasting, Inc., the licensee of radio Stations WRAJ(AM) and WRAJ-FM, Anna, Illinois (Stratemeyer Ex. 3). Stratemeyer has committed to divest himself of all interest in and connections with WRAJ(AM) and FM and to terminate his employment at the Anna stations prior to the commencement of program tests by his proposed Mt. Vernon facility in the event his instant application is granted (Stratemeyer Ex. 3).

18. Stratemeyer will hold the position of General Manager of his proposed Mt. Vernon radio station (Stratemeyer Ex. 2). In that capacity, Stratemeyer will work full-time on a daily basis, minimum of 40 hours per week (Stratemeyer Ex. 2). As General Manager, Stratemeyer will have overall supervisory responsibility for all aspects of the station's operations, including the shaping of the station's entertainment, news and public affairs programming. He will have overall responsibility for the station's sales efforts, for making and implementing the station's budget and for the hiring, firing and supervision of station personnel. All station employees will report to Stratemeyer, either directly or ultimately (Stratemeyer Ex. 2). Stratemeyer has committed to divest himself of all interest in and connection with WRAJ(AM) and FM, Anna Illinois and to give up any other employment he might hold at the time to effectuate his commitment to work full-time at the station. (*Id.*) Stratemeyer will graduate in August 1989 from Southern Illinois University with a Bachelor of Science in Finance and will not allow any educational pursuits to interfere with his full-time commitment to the Mt. Vernon station (Stratemeyer Ex. 2). He has also enrolled in a graduate program, which should he prevail here, he will also terminate (Tr. 177c).

19. Stratemeyer has pledged to move his permanent residence from Metropolis, Illinois to Mt. Vernon in the event that his instant application is granted (Stratemeyer Ex. 2).

20. During the summer of 1984, Station WRIK-FM, Metropolis, Illinois employed Stratemeyer as a Control Operator on a 40-hour-per-week basis (Stratemeyer Ex. 2; Tr. 192). Since January 1985, Stratemeyer has been a Director and 49% shareholder of Union Broadcasting, the licensee of Stations WRAJ(AM) and WRAJ-FM, Anna Illinois (Stratemeyer Ex. 2). Stratemeyer also serves as Vice President of Union Broadcasting, Inc. (Stratemeyer Ex. 2; Tr. 178). Stratemeyer's duties at the Anna stations have included overseeing their financial operation, writing checks, handling purchases, taking care of payroll, formulating sick leave and vacation policies, supervising accounts payable, and assisting in scheduling on-air personnel (Stratemeyer Ex. 2). Stratemeyer presently works at the Anna stations on a part-time basis, about 25 hours per week (Stratemeyer Ex. 2; Tr. 185).

Auxiliary Broadcast Equipment

21. Stratemeyer has committed to install auxiliary power facilities at both his main studio and transmitter sites to ensure continuous broadcast operations in the event power from conventional sources is not available (Stratemeyer Ex. 4).

Saga Communications of Illinois, Inc. (Saga)

22. Saga is a corporation organized under the laws of the state of Delaware. It has only common voting stock. The current officers and directors of Saga are as follows:

Edward K. Christian	President, Director
Patricia M. Donsbach	Vice President
Jerry B. Symons	Vice President
James E. Brooker	Vice President
Phillip L. Hoover	Vice President
Norman L. McKee	Treasurer
Marsha K. Lobaito	Secretary
Steven O. Meredith	Director
Richard C. Kernen	Director
Richard C. Wallace	Director
William F. Thompson	Director

(Saga Ex. 1, p. 1)

23. The applicant is a wholly-owned subsidiary of Saga Communications, Inc. The officers and directors of Saga Communications, Inc. are as follows:

Edward K. Christian	President, Director
James E. Brooker	Vice President
Steven Goldstein	Vice President
Norman L. McKee	Treasurer
Marsha K. Lobaito	Secretary
Steven O. Meredith	Director
Richard C. Kernen	Director
Richard C. Wallace	Director
William F. Thompson	Director

(*Id.*)

24. Saga Communications, Inc. has five classes of stock, only one of which is voting. Edward K. Christian holds 100% of the Class B common voting stock (*Id.*; p. 2 for a summary of the stockholders of Saga Communications, Inc.). Saga proposes no integration of ownership into management of the proposed station (Saga Ex. 1, p. 1).

25. Saga is the licensee of the following broadcast facilities: Radio Station WLDS(AM), 1180 KHz, Class II-D, Jacksonville, Illinois; Radio Station WLRW(FM), Channel 233B, Champaign, Illinois; and Radio Station WYMG(FM), Channel 263B, also licensed to Jacksonville, Illinois. Saga Communications, Inc., Saga's corporate parent and 100% shareholder, is also the corporate parent and 100% shareholder of: Franklin Communications, Inc. (Franklin); Lakefront Communications, Inc. (Lakefront); Saga Communications of Iowa, Inc. (Saga/Iowa); and Tidewater Communications, Inc. (Tidewater) (Saga Stipulation, p. 2, filed May 22, 1989).

26. Franklin is the licensee of Station WVKO(AM), a Class II-D facility on 1580 KHz, and Radio Station WSNY(FM), Channel 234B. Both stations are licensed to Columbus, Ohio. Lakefront is the licensee of Radio Station WKLH(FM), Channel 243B, Milwaukee, Wisconsin. Saga/Iowa is the licensee of Station KRNT(AM), a Class III facility on 1350 kHz, and radio Station KRNQ(FM), Channel 273C. Both stations are licensed to Des Moines, Iowa. Tidewater is the licensee of Radio Station WNOR(AM), a Class IV facility on 1230 KHz and Radio Station WNOR-FM, Channel 254B. Both stations are licensed to Norfolk, Virginia. (*Id.*)

27. Champaign, Illinois, is approximately 130 miles northeast of Mt. Vernon, Illinois. Saga's Station WLRW(FM) operates with the legal maximum ERP for a Class B station, 50 kW, and an HAAT of 119 meters. Station WLRW(FM)'s 1 mV/m (60 dBu) service contour extends approximately 30 miles in the direction of Mt. Vernon, Illinois. (*Id.* pp. 2-3)

28. Jacksonville, Illinois is approximately 125 miles northwest of Mt. Vernon, Illinois. Saga's Station WLDS(AM) operates with a transmitter output power of 1,000 watts. The sister Station of WLDS(AM), WYMG(FM), operates with the legal maximum ERP and HAAT for a Class B station, 50 kW and 150 meters. Station WYMG(FM)'s 60 dBu contour extends approximately 31 miles in the direction of Mt. Vernon, Illinois. (*Id.*, p. 3)

29. Columbus, Ohio is approximately 325 miles from Mt. Vernon, Illinois. Franklin's Station WVKO(AM), licensed to Columbus, operates with a transmitter output power of 1,000 watts during the daytime and 250 watts at night. The sister Station of WVKO(AM), WSNY(FM), operates at 22.2 kW ERP and 230 meters of HAAT. This power/height combination is equivalent to the legal maximum for a Class B station (50 kW and 150 meters). Station WSNY's 60 dBu contour extends approximately 32 miles in the direction of Mt. Vernon, Illinois. (*Id.*)

30. Milwaukee, Wisconsin is approximately 325 miles from Mt. Vernon, Illinois. Lakefront's Station, WKLH(FM), operates with grandfathered parameters in excess of the current legal maximum for a Class B station. The ERP is 50 kW the legal maximum, but the HAAT is 247 meters, 97 meters greater than the legal maximum of 150 meters. Station WKLH(FM)'s 60 dBu service contour extends approximately 33 miles in the direction of Mt. Vernon, Illinois. (*Id.*)

31. Des Moines, Iowa is also approximately 325 miles from Mt. Vernon, Illinois. Saga/Iowa's Station KRNT(AM) operates with a transmitter output power of 5 kW day and night, the legal maximum for a Class III station. The sister Station of KRNT(AM), KRNQ(FM), operates with an ERP of 100 kW, the legal maximum for a Class C station, and an HAAT of 384 meters, 84 meters greater than the

300 meter legal minimum. The Station's 60 dBu contour extends approximately 49 miles in the direction of Mt. Vernon. (*Id.* pp. 3-4)

32. Tidewater's Station WNOR(AM) operates with a transmitter output power of 1,000 watts daytime, the legal maximum for a Class IV station, and 250 watts at night. The sister Station of WNOR(AM), WNOR-FM, has an ERP of 46 kW and an HAAT of 152 meters, nearly equivalent to the maximum for a Class B station. (*Id.* p 4)

CR Broadcasting Inc. (CR)

33. CR is a Virginia corporation that has issued 385 shares of its 1,000 authorized shares of common voting stock. CR's officers, directors, and shareholders are as follows:

John A. Columbus, Jr.	President/Director	26%
Dennis S. Rooker	Chairman/Vice President/Treasurer/ Asst. Secretary/ Director	26%
Debra S. Mobray	Secretary	0%
Henry Posner, Jr.	Shareholder	30%
Thomas D. Wright	Shareholder	11%
Fred W. Schwartz	Shareholder	2%
Albert M. Holtz	Shareholder	5%

(CR Ex. 1 at 1)

34. CR Broadcasting, Inc., is the licensee of the following stations:

WEEL-FM	Wheeling, West Virginia
WKWK-AM	Wheeling, West Virginia
WTAO-FM	Murphysboro, Illinois
WMCL-AM	McLeansboro, Illinois
WMXX-FM	Jackson, Tennessee
WDXI-AM	Jackson, Tennessee

(CR Ex. 1 at 2)

35. CR Broadcasting, Inc., is a 98.9% limited partner and a 1% general partner of CR Broadcasting Limited Partnership, licensee of WIBM AM/FM, Jackson/Lansing, Michigan, and WKYD-AM and WWSF-FM, Andalusia, Alabama. Mr. Dennis S. Rooker is a .1% limited partner of CR Broadcasting Limited Partnership. (*Id.*)

36. Mr. Henry Posner, Jr., through affiliated entities, holds a 61.5% ownership interest in Star Cable Associates, which is a general partnership operating cable television systems in North Carolina, South Carolina, Louisiana, Virginia, Mississippi, and Texas. In addition, he holds a 39.375% ownership interest in Downs Radio Virginia, licensee of WSKX-FM, Suffolk, Virginia. (*Id.*)

37. Thomas D. Wright, through an affiliated entity, holds a 20.5% ownership interest in Star Cable Associates and a 13.125% ownership interest in Downs Radio of Virginia. (*Id.*) Albert M. Holtz holds a 7% ownership interest in Star Cable Associates. (*Id.*) Fred W. Schwartz holds a 1% ownership interest in Star Cable Associates and a 2.5% ownership interest in Downs Radio of Virginia. (*Id.* at 3). In the event that CR obtains the Mt. Vernon permit, it will divest itself of its interest in Station WMCL-AM in McLeansboro (CR Ex. 1 at 3).

38. CR does not propose integration of any of its owners into the management of the Mt. Vernon station.

Coverage

39. CR's proposed station will cover 99,225 people and 4757 square kilometers (Jt. Ex. 1 at 4).

Auxiliary Power

40. CR proposes to install auxiliary power sources at both the studio and the transmitter (CR Ex. 1 at 3).

ULTIMATE FINDINGS AND CONCLUSION

City - Grade Issue

41. Stratemeyer, Davidson and Saga would each provide the requisite city-grade service to the community of license. Only CR's proposed facility fails in city-grade service. CR would provide 70 dBu service to only 22.3% of Mt. Vernon. The evidence demonstrates that CR has failed to justify a waiver of such magnitude of the city-grade coverage requirement. *Cf. Millard Orick, Jr.*, 51 RR 2d 166 (Rev. Bd. 1982). In *Orick*, the Review Board affirmed that an applicant's proposed operation would violate the city-grade service requirement and the applicant had failed to justify waiver of the rule where, as here, transmitter sites were available from which full city-grade coverage could be achieved.

42. CR had ample opportunity afforded by the revised FM processing rules to inspect its competitors' applications and to perfect its own application during the period allotted for amendments as of right; its later denied attempt at amending its application was at best negligent and untimely. However, CR squandered that opportunity. *WCOV, Inc.* v. *FCC*, 150 U.S. App. D.C. 303, 306 (1972). The city-grade issue must therefore be resolved against CR, consequently, compelling CR's disqualification.

Comparative Issue

Comparative Coverage

43. The evidence under comparative coverage suggests that Saga and Stratemeyer warrant no preference as to each other and were CR to be considered comparatively, both Saga and Stratemeyer would merit a slight preference over CR on this count.

Diversification (Stratemeyer)

44. Under the diversification analysis, Stratemeyer has no attributable media interests. While Stratemeyer is presently an officer and director (and minority shareholder) of Union Broadcasting, Inc., licensee of Stations WRAJ and WRAJ-FM, Anna, Illinois, he has timely committed to divest himself of his interests in and sever all connections with those stations. Accordingly, Stratemeyer's interest in WRAJ and WRAJ-FM would not warrant diversification demerit. *Washington's Christian Television Outreach, Inc.*, 59 RR 2d 787, 790 (1985); *recons. den* 59 RR 2d 1679 (1986), *aff'd by judgment*, Case No. 85-1649 (D.C. Cir. Dec. 17, 1987).

CR

45. Were CR entitled to comparative consideration in this proceeding, under the *Policy Statement*, CR would be assessed a substantial diversification demerit. CR is the licensee of three AM stations and three FM stations. Two of these Stations, WMCL(AM) and WTAO(FM),

McLeansboro, Illinois, are close to Mt. Vernon. One of the AM facilities, WDXI, operates with the maximum legal daytime power for a Class III facility. The FM facilities are at or close to maximum Class A parameters.

46. In addition, CR is the general partner of CR Broadcasting Limited Partnership, the licensee of two AM stations and two FM stations. The two Limited Partnership FM stations are wide-area facilities (WIBM-FM is Class B, and WWSF is Class C1). That CR has proposed to divest itself of WMCL(AM) diminishes CR's diversity demerit but slightly. As group owner of powerful broadcast outlets, CR is highly wanting under the diversification criterion of the *Policy Statement*.

Saga

47. Saga, another group owner, suffers a similar substantial diversification demerit. Saga is the licensee of three broadcast facilities in the state of Illinois, each of which is within 130 miles of Mt. Vernon. Two of the three are wide-area Class B facilities with parameters at or close to the applicable legal limits.

48. Saga's corporate parent wholly owns the licensees of seven other broadcast stations. Of the seven, two--WSNY(FM) and WNOR-FM--are at or nearly equivalent to maximum parameters for Class B stations. One, KRNQ(FM), is a full Class C facility. KRNQ's sister Station, KRNT(AM), operates at the legal maximum power for a Class III facility. Both KRNQ and KRNT are in Iowa, state adjacent to Illinois. Another, WKLH(FM), is a grandfathered, superpowered facility in Wisconsin, a state adjacent to both Illinois and Iowa. Jerdon's interest in the Lynnville, Illinois FM channel is also attributable to Saga (Findings, para. 56). Equally, then, under the *Policy Statement*, Saga is highly wanting on diversity grounds.

Best Practicable Service

Integration - Quantitative (Stratemeyer)

49. Under the evidence, Stratemeyer can and will be given 100% credit for his integration proposal. Stratemeyer is fully able to fulfill his commitment to work full-time as sole proprietor and General Manager of the Mt. Vernon facility. The responsibilities he will hold are of a managerial level.

CR

50. Were CR entitled to comparative consideration, it would be entitled to no quantitative integration credit, it having claimed none.

Saga

51. Saga's Direct Case makes no specific integration commitment, either in terms of principals, hours or duties. Rather, it reflects virtually amorphous generalities about part-time integration. For example, "Saga proposes no integration of ownership and management (Saga Ex. 1, p. 1) as to quantitative attributes"; and relates that Symons, a Saga vice president, "proposes to divest of his position with and all interest in Saga (Saga Communications, Inc.), if Saga is awarded the construction permit in this proceeding" (*Id.* p. 3); but in any event, Saga "should be awarded the construction permit because Saga will provide the best practicable service to the community of license," presumably premised on the broad range of its broadcast experience (Saga Proposed Findings, para. 62). It adds that Saga is also entitled to minor enhancement credit because it will install and maintain auxiliary power services "as will all other applicants" (Saga Proposed Findings, para. 64). These are hardly heroic attributes of either quantitative or qualitative comparison. Accordingly, Saga is entitled to no quantitative integration credit. *Voce Intersectario Verdad America, Inc.*, 59 RR 2d 44 (Rev. Bd. 1985); *Vacationland Broadcasting Co., Inc.*, 55 RR 2d 1299, 1304 (Rev. Bd. 1984) where it is stated: "[T]he Board takes the opportunity to announce that in the future it will expect applicants to specifically state in their direct written cases the precise hour-per-week commitment proposed for each integration principal. Failure to provide this information or substantial justification for its absence may lead to denial or diminution of the integration credit sought."

CR

52. CR has neither claimed nor is entitled to any quantitative integration credit, and CR has neither claimed nor is entitled to any qualitative enhancement.

53. All surviving applicants have proposed to use auxiliary power sources. CR is basically unqualified, and thus, is not entitled to any preference from its auxiliary power proposal.

54. There are some differences in the primary service areas and populations and in the nighttime gray areas to be served by the applicants. The differences in the primary service areas and populations of the basically qualified parties are not significant enough to warrant a preference to anyone.

Integration - Qualitative (Stratemeyer)

55. Daniel S. Stratemeyer's 100% quantitative integration credit is qualitatively enhanced by his considerable past broadcast experience and his proposal to move to Mt. Vernon.

56. Were CR entitled to comparative consideration, CR would-- like Saga--be entitled to no qualitative integration credit.

57. Stratemeyer and Saga enjoy the same preference for their auxiliary power proposals. CR would be entitled to the same preference were it basically qualified. Saga would not be entitled to any qualitative enhancements; its self-described devotion to the development of bringing a new radio service to Mt. Vernon and its "stewardship of its other stations" are less than marginal attributes, comparatively; nor would CR be if it were basically qualified.

58. Stratemeyer under the evidence is the superior applicant and, hence, is the preferred applicant both under the diversification and the integration criteria, and on both quantitative and qualitative grounds.

Accordingly, for the foregoing reasons, the application of Daniel S. Stratemeyer for the captioned facilities at Mt. Vernon, Illinois may be AND IS HEREBY GRANTED; the applications of Saga Communications of Illinois, Inc. and CR Broadcasting, Inc. for those same facilities must be AND ARE HEREBY DENIED.[1]

IT IS SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

James F. Tierney
Acting Chief Administrative Law Judge

FOOTNOTE

[1] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d) (47 CFR 1.276(d)).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-77

In the Matter of

AT&T Communications Tariff F.C.C. No. 1 — Transmittal No. 1922

Software Defined Network Promotional Offering

MEMORANDUM OPINION AND ORDER

Adopted: February 16, 1990; Released: February 16, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 21, 1989, AT&T Communications (AT&T) filed the above-captioned transmittal as a promotional offering for one of its Software Defined Network (SDN) plans. In Transmittal No. 1922, AT&T proposes to offer a credit of $450 for any customer location converted to SDN which meets two conditions. First, a customer must have either already placed an order to AT&T for AT&T's SDN Expanded Volume Plan (EVP) Part II service without the service having been installed by November 21, 1989, or the customer must place an order for SDN EVP Part II by February 5, 1990, and request installation for no later than May 5, 1990. AT&T Description and Justification at 1-2.

2. Second, the customer must demonstrate that prior to November 21, 1989, the customer received a proposal from another interexchange carrier (IC) for an SDN-like service which offered the customer a credit to offset usage charges for all the customer's locations served by the competitor until the competitor's SDN-like service is installed. *Id.* US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject or, in the alternative, to suspend and investigate on December 6, 1989. AT&T filed a reply on December 18, 1989. Transmittal 1922 is scheduled to become effective on February 19, 1990, on 90 days' notice.

II. SUMMARY OF PLEADINGS

3. In its petition, Sprint asserts that Transmittal 1922 is unreasonably discriminatory because of the condition that a customer must have had an offer made to it before November 21, 1989. Sprint Petition at 2-3. Moreover, Sprint states that the offer proposed by AT&T is not a legitimate competitive response: rather, Sprint says it is "an attempt by the dominant carrier to discipline its competitors." *Id.* at 3. Sprint rejects AT&T's argument that the offer is made in direct response to competitive proposals offered by other ICs and notes that AT&T identifies only one such customer.[1] *Id.* at 4-5. Finally, Sprint argues that AT&T has failed to provide the cost support information required by Section 61.49 of the Commission's Rules, 47 C.F.R. § 61.49. *Id.* at 5-6.

4. AT&T replies that it is allowed, under Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), to make the type of offering it is proposing in Transmittal 1922.[2] AT&T Reply at 2-3. In addition, AT&T reaffirms that it is proposing this promotional offering as a competitive response. *Id.* at 3. AT&T also asserts that Transmittal 1922 is not unreasonably discriminatory because it is made available to similarly-situated customers, *i.e.*, any customer that meets the two conditions described in the tariff. Customers that do not meet the conditions imposed by AT&T are not similarly situated, AT&T concludes. *Id.* at 3-4. Finally, AT&T asserts that it has presented the cost information required by the Commission's Rules. *Id.* at 4-6.

III. DISCUSSION

5. The language AT&T has used to describe this offering may violate Section 61.2 of the Commission's Rules, 47 C.F.R. § 61.2. That provision requires that "all tariff publications must contain clear and explicit explanatory statements regarding rates and regulations." This requirement insures that customers are able to determine from the four corners of the tariff what services are offered and the precise terms on which those services are offered. AT&T's second requirement, that a customer "demonstrate" that it has received a similar offer from another IC, [3] may be inadequate. The tariff does not explain how that customer should make that demonstration, *e.g.*, whether the customer must show written evidence of an offer or simply state that an oral offer has been made or possibly prove that an offering exists that the customer could have chosen to accept. Moreover, the tariff does not explain what competing services are sufficiently "SDN-like" to satisfy AT&T's requirement.

6. The imprecision in tariff language presumably could be easily remedied. We have decided, however, that a suspension and investigation is warranted in this instance in light of allegations that the combination of provisions in this transmittal in fact restrict this particular offering to one particular customer. If this is the case, this offering appears to raise the same questions that will be investigated in CC Docket No. 90-11.[4] We will designate specific issues and establish a pleading cycle in a subsequent order.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation is instituted into the lawfulness of the tariff revisions filed by AT&T Communications, Inc. in Tariff F.C.C. No. 1, Transmittal No. 1922.

8. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revisions filed by AT&T Communications, Inc. ARE SUSPENDED until July 19, 1990.

9. IT IS FURTHER ORDERED that AT&T Communications, Inc. SHALL FILE a supplement reflecting this suspension no later than February 23, 1990. Special Permission No. 90-181 is assigned for this purpose.

10. IT IS FURTHER ORDERED that the petition to reject or, in the alternative, to suspend and investigate, filed by US Sprint Communications Company Limited Partnership against AT&T Communications, Tariff F.C.C. No. 1, Transmittal No. 1922, IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Sprint also contends that AT&T's representations concerning this customer are false.

[2] Citing AT&T Communications, Revisions to Tariff F.C.C. No. 12, CC Docket No. 87-568, 4 FCC Rcd 4932, 4937-38 (1989).

[3] Transmittal 1922 states that the customer "must demonstrate that prior to November 21, 1989, the Customer received a proposal from another interexchange service provider for SDN-like service which offered the Customer a credit to offset usage charges for all Customer locations served by the competitor until the competitor's SDN-like service is installed." *See* AT&T Communications, Tariff F.C.C. No. 1, Transmital No. 1922, Section 8.1.1(R).

[4] *See* AT&T Communications, Inc. CC Docket No. 90-11, DA 90-44 (Com.Car.Bur. Jan. 19, 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 23, 1990

THE AMERITECH OPERATING COMPANIES FILE PETITION FOR WAIVER OF PART 69 TO ESTABLISH OPERATOR TRANSFER SERVICE

Pleading Cycle Established

On February 16, 1990, the Ameritech Operating Companies (Ameritech) filed a petition for waiver of Part 69 of the Commission's Rules to permit the establishment of a new rate subelement and a reallocation of the associated costs and investment from the Interexchange category to the Information element, for the provision of Operator Transfer Service (OTS). On the same date, Ameritech filed Transmittal No. 425 proposing to provide OTS as a Feature Group D optional feature.

Interested parties should file comments regarding the Ameritech waiver petition no later than **April 9, 1990.** Reply comments should be filed no later than **April 24, 1990.** Petitions against the related tariff should not be filed at this time. A pleading cycle with respect to the tariff will be established by a subsequent Public Notice after completion of the pleading cycle established in this Public Notice relating to the Ameritech petition for waiver. Section 1.773(a)(2)(ii) of the Commission's Rules is waived for purposes of deferring petitions against the tariff.

Parties are requested to furnish copies of their pleadings to International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of the Ameritech Operating Companies' waiver petition, along with other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W. An original and four copies of all pleadings and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules. In addition, one copy of each pleading must be filed with ITS.

For further information, contact Wanda M. Harris, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-474

In the Matter of

Amendment of Section 73.202(b),	RM-5855
Table of Allotments,	RM-5878
FM Broadcast Stations.	RM-5915
(Springdale, Arkansas; Carthage, Aurora and Willard, Missouri)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1990; Released: March 6, 1990

By the Acting Chief, Policy and Rules Division:

1. Before the Commission are petitions for reconsideration filed by Carthage Broadcasting Company ("CBC"), licensee of Station KRGK(FM), Channel 285A, Carthage, Missouri, and Ladco Communications, Inc. ("Ladco"), licensee of Station KTOZ-FM, Channel 285A, Marshfield, Missouri, of the *Report and Order*, 4 FCC Rcd 674 (1989). The *Report and Order* substituted Channel 285C2 for Channel 285A at Springdale, Arkansas, Channel 263C2 for Channel 261A at Aurora, Missouri, Channel 286C2 for Channel 263A at Willard, Missouri, and Channel 250A for Channel 285A at Carthage. Ladco filed a motion for stay of the *Report and Order*. Aurora Broadcasting, Inc. ("ABI"), licensee of Station KELE-FM, Channel 261A, Aurora, filed a motion to sever RM-5915 from this proceeding. ABI and Moran Broadcasting Company ("MBC"), licensee of Station KCIZ-FM, Channel 285A, Springdale, filed oppositions to the Ladco and CBC petitions for reconsideration. M.W. Multicom, Inc., an applicant for an authorization at Channel 263A in Willard, filed oppositions to Ladco's petition for reconsideration and ABI's motion to sever. CBC filed a consolidated reply to MBC and ABI's oppositions.

2. After the close of the pleading cycle in this proceeding, CBC submitted reply comments in a separate proceeding, MM Docket No. 89-301, stating that it would withdraw its petition for reconsideration if the Commission granted its petition for rule making in Docket 89-301.[1] By a separate *Report and Order* in Docket 89-301 we will grant CBC's petition. Accordingly, we dismiss CBC's petition for reconsideration.

3. Ladco argues in its petition for reconsideration that the Commission improperly required Ladco to modify its modification application for Station KTOZ-FM in order to accommodate the Willard substitution. Ladco states that it was unaware of the conflict between its application and the Willard substitution until after the *Report and Order* in this proceeding was released, and was therefore unable to comment on the proposal. Citing to *Notice of Proposed Rule Making (Hawley, Pennsylvania)*, 3 FCC Rcd 5247 (Deputy Chief, Pol. and Rules Div. 1988), Ladco argues that the Commission has previously protected an applicant's preferred transmitter site in a rule making proceeding.

4. After Ladco filed its petition for reconsideration, it modified its modification application as directed in the *Report and Order*. A construction permit has been granted to Ladco for the site specified in its modified application.[2] In light of these facts, we find nothing in Ladco's petition for reconsideration that would warrant considering the site specified in its prior application as anything more than a mere site preference. Therefore, we deny Ladco's petition for reconsideration.[3]

5. Accordingly, IT IS ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Michael Ruger, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Acting Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] CBC's petition for rule making requested the substitution of Channel 236C2 for Channel 285A at Carthage and the modification of the license for Station KRGK(FM), Carthage, to specify the new channel. CBC also requested the substitution of Channel 250A for Channel 236A at Webb City, Missouri, to accommodate the Carthage substitution. There are no outstanding expressions of interest in the Carthage allotment and no counterproposals to CBC's proposal. In addition, the licensee of Channel 250A at Webb City has stated that it does not object to the proposed substitution.

[2] *See* File No. BPH-880211MQ.

[3] Accordingly, Ladco's motion for stay and Aurora Broadcasting's motion to sever are dismissed as moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN SATELLITE COMPANY, and
CICI. INC.
Complainants,

v. File No. E-89-138

COMMUNICATIONS SATELLITE
CORPORATION
Defendant.

ORDER

Adopted: February 8, 1990; Released: March 6, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On April 4, 1989, American Satellite Company, d/b/a Contel ASC, and CICI. Inc., d/b/a Contel ASC, International Division (referred to collectively as "Contel ASC"), filed a formal complaint against Communications Satellite Corporation ("COMSAT"). Complainants allege that COMSAT's course of conduct concerning the lease renewal for Transponder No. 37 was improper and unjustly and unreasonably discriminated against Contel ASC in violation of Section 202 of the Communications Act, 47 U.S.C. § 202. On January 11, 1990, Contel ASC and COMSAT filed a joint request that the Commission dismiss the complaint with prejudice because of their resolution of the underlying dispute.

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

RADIOPHONE CORPORATION File No. 10216-CL-P-413-A-88

For authorization to construct and operate a Domestic Public Cellular Radio Telephone System in Rural Service Area Market No. 413, Iowa 2 - Union

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 1990; Released: March 7, 1990

By the Chief, Common Carrier Bureau:

1. Radiophone Corporation (Radiophone) was selected in a lottery on April 14, 1989, for the non-wireline cellular license for Rural Service Area (RSA) Market No. 413, Iowa 2 - Union. On April 20, 1989, Radiophone filed its original application and two paper copies. On May 12, 1989, the Mobile Services Division (MSD) dismissed Radiophone's application as defective because the application did not include a map on a 1:250,000 scale as required by Section 22.903(a) of the Commission's Rules,[1] 47 C.F.R. Section 22.903(a). Instead, applicant filed only a copy of a map originally drawn on a 1:250,000 scale and then reduced to an 8 1/2 by 11 inch page. Radiophone has filed a Petition for Reconsideration of this decision on June 20, 1989.[2] No responsive pleadings have been filed.

RADIOPHONE'S CONTENTIONS

2. In support of its request that its application be reinstated, Radiophone argues that none of the Commission's rules directs RSA applicants to submit a "full-size" map (*i.e.* a map on a scale of 1:250,000). It points out that the *Erratum to Further Order on Reconsideration*, 53 Fed. Reg. 28640 (July 29, 1988) (" *Erratum* ") deleted from Section 22.923(a)(1) a clause which stated that the full-sized map must be present in the original application. The *Erratum* also deleted a phrase in Section 22.923(a)(1) which referred to Section 22.903(a) in connection with the requirement to file a full-size map. [3]

3. Radiophone argues that, without the language which expressly requires the inclusion of a full-size map with the "original application," the rule tells prospective applicants only that their applications must include the "information" in Section 22.903(a)(1) and a map, specifically, a reduced copy of a 1:250,000 or 1:500,000 full-scale map. Radiophone argues that the final two lines of Section 22.923(a)(1) neither imply nor expressly impose an obligation to file the full-size map, because the reference to "an original application" in which the full size map "must be present" has been deleted.

4. Radiophone further argues that Section 22.903(a)(1) does not require submission of a full-size map because it merely requires that the Cellular Geographic Services Areas (CGSAs) be drawn on such a map, without mention of whether the map must be submitted. Even though Section 22.923 states that the exhibit "must contain all the information specified in Section 903(a)(1)," Radiophone argues that this does not provide a basis for the requirement that the full-size map be submitted because that language was deleted by the *Erratum*. Radiophone argues that to read into Section 22.923 a requirement that a full-size map be submitted with the application would be inconsistent with the common meaning of the term "information," which normally addresses content of a matter rather than its form. In addition, Radiophone argues that such a reading would create an internal inconsistency between Section 22.923 and Section 22.903. Radiophone argues that the Section 22.923 reference to the "information" in Section 22.903(a)(1) can only be interpreted to refer to the content of the information which must be contained in the application and the map, not to any obligation to submit a particular size of map as part of the application.

5. According to Radiophone, rules of statutory construction hold that if a change occurs in legislative language, a change was intended in legislative result. By deleting the language explicitly referring to a full-size map, Radiophone argues, the Commission must have meant to delete the requirement that such a map be filed. Even if the Commission meant to require that a full-size map be filed with the application, Radiophone urges that it should not be penalized so severely for failing to discern the existence of such a requirement, given what it argues is the inadequacy of the Section 22.923 notice of the requirement. Radiophone observes that it filed an original application identical to the microfiche application, including the reduced map required by Section 22.923(a)(1).

6. In addition, Radiophone argues that under the rule of *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985), as the severity of the Commission's sanction increases, so must the preciseness and clarity of the Commission's requirements. It argues that since Section 22.923 does not "precisely" or "clearly" specify that a full-size map must be filed with the application, dismissal is too severe a sanction. At most, argues Radiophone, it should be required to file a full-size map as an amendment, and such amendment should be accepted as a minor amendment. Radiophone attaches a full-size map to its petition.

7. Radiophone contends that any requirement to file a full-size map is not part of the letter-perfect requirement, which applies only "to initial intake of cellular applications and is inapplicable to post-lottery review of lottery winners," citing *Johnstown Cellular Communications Co.*, 1 FCC Rcd. 1164, 1165 (Com. Car. Bur. 1986). Radiophone argues that the MSA cases pertaining to maps were decided pursuant to a requirement that full-size maps be submitted at the pre-lottery stage. Accordingly, failure to submit the full-size map would violate the letter-perfect requirements. On the other hand, argues Radiophone, the RSA rules do not require a map to be filed until the post-lottery stage, and hence, Radiophone argues, a more lenient standard applies. Instead, Radiophone argues, the standard for the post-lottery stage is "compliance with the cellular standards," *U. S. West NewVector Group*, 2 FCC Rcd. 5431 (1987), citing *Cellular*

Lotteries, 59 Rad. Reg. 2d (P&F) 407, 410 (1985). At this stage, argues Radiophone, minor amendments may be filed to correct applications as of right. Radiophone argues that its amendment, which contains a full-size map, is acceptable as of right, because submission of a map is not one of the major amendment categories defined by Section 22.23(c) of the Rules.

8. Moreover, argues Radiophone, its submission of the full-size map as a minor amendment does not add anything substantive to its application. Radiophone argues that it has submitted all the required data to process its application, because all the information on the full-size map was available from the reduced map, as well as other parts of the application. Radiophone points out that in *Johnstown Cellular Communications Co., supra* at 1165, the Commission held that omission of duplicative data is not a violation of the rules. Radiophone further argues that the Commission has permitted applicants to amend their applications even in "consequential" ways. It states that in *Fred Farley*, 4 FCC Rcd. 4670 (Com. Car. Bur. 1989), for example, an applicant submitted the wrong original application, but was permitted to submit the correct original.

9. Radiophone also argues that *Rem Communication*, 3 FCC Rcd. 3705 (1988), supports reinstatement of its application. In *Rem*, the Commission found that an application was defective for failure to submit a proper map. Although the applicant had submitted a map with its application, the map was illegible. The Commission found that because the map could not be used for processing, the application was defective. By contrast, Radiophone argues, the reduced 8 1/2 by 11 inch map it submitted with its application was fully legible and can be used in processing. It states that all of the information contained in the full-size map, including longitude and latitude, was included in the reduced map. Accordingly, Radiophone concludes that its amendment merely duplicates information already on file with the Commission.

10. In support of its petition, Radiophone files an affidavit from Mr. Darrell E. Bauguess, the President of D.B. Communications, Inc., who was responsible for the preparation of Radiophone's engineering exhibits. He states that the exhibits included a 1:250,000 scale map of the RSA, from which a reduced copy was made, and that the map was prepared in advance of the date for filing the microfiche copy of the application with the Commission. Mr. Bauguess further states that the reduced copy of the map reflects legibly the market information, the RSA and CGSA boundaries, the 39 dBu contour, and the bounding geographic coordinates. He also indicates that all information required by Sections 22.903(a)(1) and 22.922(a)(1)[4] of the Commission's rules are reflected legibly on the map. Finally, Mr. Bauguess states that the Schedule B represents all the information required to identify the site location, the technical parameters of the site and the distance from the site in eight radial directions to the 39 dBu contour.

DISCUSSION

11. Contrary to Radiophone's allegations, the rules governing submission of a full-size map with the original and paper copies of its cellular application are clear. Section 22.923(a) states in pertinent part:

> Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. *The following exhibits shall be attached to any such application:*
>
> (1) An exhibit including a map or maps of the . . . Cellular Geographic Service Area proposed in the application. *This exhibit shall contain all the information specified in Section 22. 903 (a) (1). In addition*, this exhibit shall include [a] . . . reduced copy of a *1:250,000 or 1:500,000* scale map depicting *the complete RSA* and any CGSA(s) therein. Boundaries of the RSA, CGSA(s), and 39 dBu contours must be clearly indicated. The full-size map *need not be included in the microfiche copies* of the application from which the microfiche is made. *For microfiching purposes, the reduced map is sufficient.*

(Emphasis added). Section 22.903(a)(1) states in pertinent part:

> . . . The GCSA *must be drawn* on one or more U.S. Geological survey map(s) *with a scale of 1:250,000. For RSAs* the CGSA map need only depict the area(s) encompassed by any CGSA(s) with the RSA *(and that portion of the RSA visible on the map)*. . . .

12. Section 22.923(a) directs the applicant to file as an exhibit to its application the information specified in Section 22.923(a)(1). The first sentence of Section 22.923(a)(1) states that the exhibit is to include a map of the CGSA. The second sentence states that the exhibit shall contain all the information required by Section 22.903(a)(1). We note Radiophone's contention that the term "information" cannot be read to impose as obligation to file a particular size map. *See* para. 4, *supra*. However, the third sentence states that, "[i]n addition," the exhibit shall include a reduced copy of a 1:250,000 or 1:500,000 scale map. If the rules only required a reduced map the words "[i]n addition" would be superfluous, as would the first sentence. Moreover, and perhaps more significantly, Section 22.923(a)(1) would be rendered internally inconsistent (and Section 22.903(a) a practical nullity) if the rules required RSA applicants to draw their CGSAs on a 1:250,000 scale map but at the same time permitted them to submit to the Commission only a reduced map with a scale of 1:500,000.[5] In permitting applicants to use a 1:500,000 (or 1:250,000) scale map for the reduced copy, but requiring as well the submission of a full size (1:250,000 scale) map with the original and paper copies, the Commission perceived the need to make available to its engineering staff the full-scale map for use during application processing. Therefore, filing a reduced map alone does not meet the Commission's requirements. Section 22.903(a)(1), taken together with the provisions of Section 22.923(a)(1), require the applicant to file, with its original application, a map depicting the CGSA on a scale of 1:250,000.

13. The clarity of this rule is reinforced by its reference to what the microfiche copies of any applications filed for RSA cellular licenses should contain. An axiom of statutory construction is that "the inclusion of one is the exclusion of the other."[6] Thus, when the rule specifies that a reduced map is sufficient for microfiching pur-

poses, it follows that a reduced map is not sufficient for purposes other than microfiche copies, *i.e.*, the filing of the paper original and photocopies of the application.

14. Based on the foregoing, we reject Radiophone's argument that the *Erratum* removed, or at the least rendered ambiguous, the requirement to file a full-size map with the application. The *Erratum*'s deletion of the words "but must be present in the original application" did not serve to remove the requirement that the full-size map be filed.

15. Section 22.20(a) of the Commission's Rules governs dismissal of defective applications. That rule states in pertinent part:

> . . . an application will be unacceptable for filing and will be returned to the applicant . . . if . . . [t]he application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or ... [t]he application does not comply with the Commission's rules, regulations . . . or other requirements.

Thus, unless the Commission permits otherwise, Section 22.20 requires dismissal of defective applications. The Commission has held that, absent grounds for a waiver, an application found to be defective under Section 22.20 may not be amended, because it is not acceptable for filing.[7] *See, e.g., Rem Communication*, 3 FCC Rcd 3705 (1988).

16. The Commission has held that filing an unusable map in a cellular application renders the application defective unless good cause for granting a waiver is shown. In *Rem Communication*, 3 FCC Rcd. at 3705, the applicant filed an illegible map. The Commission found that an illegible map could not be used to process its application, and accordingly held that Rem's application was defective. We find that Radiophone's application is similarly defective. In *Sun Communications, Inc.*, 4 FCC Rcd. 6429 (Com. Car. Bur. 1989), the Bureau found that submission of a "full-size" map on a scale of 1:500,000 was not in accord with the rules. However, the Bureau found that the map was legible, and had clear latitude, longitude, and scale markings. It found that the "scale of the map, while not the optimum for processing purposes, does not, by itself, prevent the staff from processing the application." Accordingly, the Bureau concluded that the 1:500,000 map scale was a minor error. By contrast, in this case, Radiophone's map is 8 1/2 by 11 inches, a size inadequate for processing purposes. There is not sufficient detail visible on the reduced map to permit processing. Accordingly, the situation in this case is governed by the Commission's holding in *Rem Communication* and is dissimilar from the minor map scale error in *Sun Communication*.[8] Likewise, in *Petitions for Reconsideration of the Return of Round IV Cellular Applications for Having Defective Maps*, 103 F.C.C.2d 366, 368 (1986), the applicant's map was a photographed composite of four U. S. Geological Survey maps each with a scale of 1:250,000. The photograph was then reduced in size and the applicant submitted the resulting 7 1/2 by 9 1/2 map with a map scale of approximately 1:690,000. Upholding dismissal of the application, the Commission stated that performing engineering calculations on such a small map was "virtually impossible." *Id.* The reduction of Radiophone's map also renders it of too small a scale to permit making the engineering calculations required during processing.

17. We conclude that Radiophone's application omitted an important informational showing and failed to comply with the Commission's rules. This omission renders the application defective pursuant to Section 22.20 of the Commission's Rules. The application may not be amended because it is not acceptable for filing. Accordingly, we must dismiss Radiophone's application.

ORDERING PARAGRAPH

18. WHEREFORE, the foregoing premises considered, IT IS HEREBY ORDERED that the Petition for Reconsideration filed by Radiophone Corporation IS DENIED and the Mobile Services Division's dismissal of Radiophone Corporation's application IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] As Radiophone points out, the letter dismissing its application also cited Section 22.913(a)(2) of the Commission's Rules, which governs information to be filed with applications for Metropolitan Statistical Areas (MSAs), rather than Section 22.923(a)(1) which governs information to be filed with applications for Rural Service Areas. The identification of which rule was violated was a typographical error. The MSD dismissed the application pursuant to Section 22.923(a)(1) of the Rules.

[2] Radiophone includes a map on a scale of 1:250,000 with its petition.

[3] In the *Further Order on Reconsideration*, 53 Fed. Reg. 18562, 18564 -18565 (May 24, 1988), 64 Rad. Reg. 2d (P&F) 1360 (1988), in which Section 22.923 was first adopted, the rule stated in part:

> (a) Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. The following exhibits shall be attached to any such application:
>
> (1) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in Section 22.903(a). In addition, this shall include an 8 1/2 by 11 inch reduced copy of the 1:250,000 scale map [required by Section 22.903(a)]. The full-size map need not be included in the microfiche copies of the application [, but must be present in the original application] from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

(Language in the foregoing passage whaich was deleted by the *Erratum* has been enclosed in brackets. Language added by the *Erratum* is underlined in the following text of the present rule section.)

(a) * * *

(1) . . . In addition, this *exhibit* shall include an 8 1/2 by 11 inch reduced copy of a 1:250,000 *or 1:500,000 scale map, depicting the complete RSA and any CGSA (s) therein. Boundaries of the RSA, CGSA (s), and 39dBu contours must be clearly indicated.* The full-size map need not be included in the microfiche copies of the application from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

[4] The affidavit apparently contains an editorial error with regard to this rule section. Presumably, Mr. Bauguess meant to cite Section 22.923(a)(1) of the Commission's rules.

[5] This scale may be necessary in order for an applicant to depict the entire boundary of its RSA, as required by Section 22.923(a)(1) and in distinction to Section 22.903(a)(1), which requires that an applicant depict only that portion of its RSA that is visible on the 1:250,000 scale map.

[6] *Expressio unius est exclusio alterius. See* Norman J. Singer, Statutes and Statutory Construction, Section 47.23 (4th ed. 1984).

[7] Although Radiophone is correct that the letter-perfect rule does not apply to the submission of a full-size map, *see Jacksonville Cellular Telephone Corp.*, 3 FCC Rcd. 5386 (1988), it is not correct that it may amend its application as of right so long as the amendment does not fall under one of the "major amendment" categories in Section 22.23. Section 22.23(a), which governs amendments as of right, states in pertinent part that "[a] pending application may be amended as a matter of right if the application has not been designated for hearing or placed on public notice for a random selection process." Radiophone's amendment was filed after its application was placed on public notice for a random selection process. Accordingly, the provisions of this rule are unavailable to it.

[8] In *James K. Larrington Corporation*, 2 FCC Rcd. 1529 (1987), *Werner, Burton K.*, 2 FCC Rcd. 1484 (1987), and *U.S. West NewVector Group, supra*, cited by Radiophone in support of its argument that its map should be accepted as a minor amendment, the informational showings were complete, and processing of the applications could proceed unhindered. Amendments correcting errors of a clerical nature were therefore acceptable. Similarly, in *Fred Farley, supra*, the Bureau granted a waiver and accepted Farley's late-filed original paper application. The Bureau found that the waiver was justified because Farley complied with the initial filing requirements and only a brief delay occurred in receiving the correct application. 4 FCC Rcd at 4671. The Bureau stated that: "While we emphasize the need to observe *procedural* requirements, we recognize that excessive rigidity in applying the deadlines for post-lottery filings is not in the public interest." *Id.* (emphases added) The situation here with regard to Radiophone's failure to file a map is not analogous to that in *Fred Farley*. The Commission's map requirement is substantive, not procedural, in nature. The fact that the RSA rules do not require submission of the paper application, which contains the full-size map, until after the lottery, does not change the nature of this requirement or invoke a more lenient standard, as urged by Radiophone. If the original application contains a substantive defect as is the case here, it is defective *ab initio* and may not be later cured. *See Rem Communications, supra.* We note further that pursuant to Section 22.923(b)(7), RSA applicants must certify that their applications are "complete in every respect." While Radiophone made such a certification in its application, including the microfiche copies, such certification was not correct.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

WINNEBAGO COOPERATIVE TELEPHONE ASSOCIATION — File No. 10249-CL-P-425-B-88

For authorization to construct and operate a Domestic Public Cellular Radio Telephone System in Rural Service Area Market No. 425, Iowa 14 - Kossuth

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 1990; Released: March 7, 1990

By the Chief, Common Carrier Bureau:

1. Winnebago Cooperative Telephone Association (Winnebago) was selected in a lottery on April 13, 1989, for the wireline cellular license for Rural Service Area (RSA) Market No. 425, Iowa 14 - Kossuth. On April 21, 1989, Winnebago filed its original application and two paper copies. On May 11, 1989, the Mobile Services Division (MSD) dismissed Winnebago's application as defective because the application did not include a map on a 1:250,000 scale[1] as required by Section 22.903(a) of the Commission's Rules, 47 C.F.R. Section 22.903(a).[2] Instead, applicant filed only a copy of a map originally drawn on a 1:250,000 scale and then reduced to an 8 1/2 by 11 inch page. Winnebago has filed a Petition for Reconsideration of this decision. No responsive pleadings have been filed.

I. WINNEBAGO'S CONTENTIONS

2. In support of its request that its application be reinstated, Winnebago argues that none of the Commission's rules directs RSA applicants to submit a "full-size" map (*i.e.* a map on a scale of 1:250,000). It points out that the *Erratum to Further Order on Reconsideration*, 53 Fed. Reg. 28640 (July 29, 1988) (" *Erratum* "), deleted from Section 22.923(a)(1) a clause which stated that the full-sized map must be submitted with the original application. The *Erratum* also deleted a phrase in Section 22.923(a)(1) which referred to Section 22.903(a) in connection with the requirement to file a full-size map. [3]

3. Winnebago argues that, without the language which expressly requires the inclusion of a full-size map with the "original application," the rule tells prospective applicants only that their applications must include the "information" in Section 22.903(a)(1) and a map, specifically, a reduced copy of a 1:250,000 or 1:500,000 full-scale map. Winnebago contends that the final two lines of Section 22.923(a)(1) neither imply nor expressly impose an obligation to file the full-size map, because the reference to "an original application" in which the full size map "must be present" has been deleted.

4. Winnebago further argues that Section 22.903(a)(1) does not require submission of a full-size map because it merely requires that the Cellular Geographic Service Areas (CGSAs) be drawn on such a map, without mention of whether the map must be submitted. Even though Section 22.923 states that the exhibit "must contain all the information specified in Section 22.903(a)(1)," Winnebago argues that this does not provide a basis for the requirement that the full-size map be submitted because that language was deleted by the *Erratum*. Winnebago argues that the Section 22.923 reference to the "information" in Section 22.903(a)(1) can only be interpreted to refer to the content of the information which must be contained in the application and the map, not to any obligation to submit a particular size map as part of the application. Winnebago further asserts that its map exhibit contains all the information required by Section 22.923(a).

5. According to Winnebago, rules of statutory construction hold that if a change occurs in legislative language, a change was intended in legislative result. By deleting the language explicitly referring to a full-size map, Winnebago argues, the Commission must have meant to delete the requirement that such a map be filed. Even if the Commission meant to require that a full-size map be filed with the application, Winnebago urges that it should not be penalized so severely for failing to discern the existence of such a requirement, given what it argues is the inadequacy of the Section 22.923 notice of the requirement. Winnebago observes that it filed an original application identical to the microfiche application, including the reduced map required by Section 22.923(a)(1).

6. In addition, Winnebago argues that under the rule of *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985), as the severity of the Commission's sanction increases, so must the preciseness and clarity of the Commission's requirements. It argues that since Section 22.923 does not "precisely" or "clearly" specify that a full-size map must be filed with the application, dismissal is too severe a sanction. At most, argues Winnebago, it should be required to file a full-size map as an amendment and such amendment should be accepted as a minor amendment. Winnebago submitted a full-size map on May 15, 1989, in response to the dismissal of its application.

7. Finally, Winnebago argues that Section 22.903(a)(1) and Section 22.923(a)(1) contain conflicting requirements. Winnebago notes that Section 22.903(a)(1) requires the full-size map to be drawn on a scale of 1:250,000, while Section 22.923(a)(1) allows the 8 1/2 by 11 inch copy to be made from either a 1:250,000 or a 1:500,000 scale map.[4] Winnebago also notes that Section 22.923(a)(1) requires that the map show the entire RSA, while Section 22.903(a)(1) only requires that the map depict those portions of the RSA encompassed by the CGSA(s). Winnebago argues that given these conflicting map provisions, Section 22.923 should govern. Winnebago asserts that Section 22.923 addresses the content of RSA applications and is therefore the Section most applicable to the question of what map must be included in the application. Winnebago further argues that Section 22.923(a)(1)

only requires applicants to file the reduced 8 1/2 by 11 inch map.

II. DISCUSSION

8. Contrary to Winnebago's allegations, the rules governing submission of a full-size map with the original and paper copies of its cellular application are clear. Section 22.923(a) states in pertinent part:

> Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. *The following exhibits shall be attached to any such application:*
>
> (1) An exhibit including a map or maps of the . . . Cellular Geographic Service Area proposed in the application. *This exhibit shall contain all the information specified in Section 22. 903 (a) (1). In addition,* this exhibit shall include [a] . . . reduced copy of a *1:250,000 or 1:500,000* scale map depicting *the complete RSA* and any CGSA(s) therein. Boundaries of the RSA, CGSA(s), and 39 dBu contours must be clearly indicated. The full-size map *need not be included in the microfiche copies* of the application from which the microfiche is made. *For microfiching purposes, the reduced map is sufficient.*

(Emphasis added). Section 22.903(a)(1) states in pertinent part:

> . . . The GCSA *must be drawn* on one or more U.S. Geological survey map(s) *with a scale of 1:250,000. For RSAs* the CGSA map need only depict the area(s) encompassed by any CGSA(s) with the RSA *(and that portion of the RSA visible on the map)* . . .

9. Section 22.923(a) directs the applicant to file the information specified in Section 22.923(a)(1). The first sentence of Section 22.923(a)(1) states that the exhibit is to include a map of the CGSA. The second sentence states that the exhibit shall contain all the information required by Section 22.903(a)(1). We note Winnebago's contention that the term "information" cannot be read to impose an obligation to file a particular size map. *See* para. 4 *supra*. However, the third sentence states that, "[i]n addition," the exhibit shall include a reduced copy of a 1:250,000 or 1:500,000 scale map. If the rules only required a reduced map the words "[i]n addition" would be superfluous, as would the first sentence. Moreover, and perhaps more significantly, Section 22.923(a)(1) would be rendered internally inconsistent (and Section 22.903(a)(1) a practical nullity) if the rules required RSA applicants to draw their CGSAs on a 1:250,000 scale map but at the same time permitted them to submit to the Commission only a reduced map with a scale of 1:500,000.[5] In permitting applicants to use a 1:500,000 (or 1:250,000) scale map for the reduced copy, but requiring as well the submission of a full size (1:250,000 scale) map with the original and paper copies, the Commission perceived the need to make available to its engineering staff the full-scale map for use during application processing. Therefore, filing a reduced map alone does not meet Commission requirements. While Winnebago would have us interpret Commission rules such that they cannot stand together, *see* para. 7, *supra*, rules of statutory construction instruct us otherwise.[6] Section 22.903(a)(1), taken together with the provisions of Section 22.923(a), require the applicant to file, with its original application, a map depicting the CGSA on a scale of 1:250,000.

10. The clarity of this rule is reinforced by its reference to what the microfiche copies of any applications filed for RSA cellular licenses should contain. An axiom of statutory construction is that "the inclusion of one is the exclusion of the other."[7] Thus, when the rule specifies that a reduced map is sufficient for microfiching purposes, it follows that a reduced map is not sufficient for purposes other than microfiche copies, *i.e.*, the filing of the paper original and photocopies of the application.

11. Based on the foregoing, we reject Winnebago's argument that the *Erratum* removed, or at the least rendered ambiguous, the requirement to file a full-size map with the application. The *Erratum*'s deletion of the words "but must be present in the original application" did not serve to remove the requirement that the full-size map be filed.

12. Section 22.20(a) of the Commission's Rules governs dismissal of defective applications. That rule states in pertinent part:

> . . . an application will be unacceptable for filing and will be returned to the applicant . . . if . . . [t]he application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or . . . [t]he application does not comply with the Commission's rules, regulations ... or other requirements.

Thus, unless the Commission permits otherwise, Section 22.20 requires dismissal of defective applications. The Commission has held that, absent grounds for a waiver, an application found to be defective under Section 22.20 may not be amended, because it is not acceptable for filing. *See, e.g., Rem Communication*, 3 FCC Rcd. 3705 (1988).

13. The Commission has held that filing an unusable map in a cellular application renders the application defective unless good cause for granting a waiver is shown. In *Rem Communication*, 3 FCC Rcd. at 3705, the applicant filed an illegible map. The Commission found that an illegible map could not be used to process its application, and accordingly held that Rem's application was defective. We find that Winnebago's application is similarly defective. In *Sun Communications, Inc.*, 4 FCC Rcd. 6429 (Com. Car. Bur. 1989), the Bureau found that submission of a map on a scale of 1:500,000 was not in accord with the rules. However, the Bureau found that the map was legible, and had clear latitude, longitude, and scale markings. It found that the "scale of the map, while not the optimum for processing purposes, does not, by itself, prevent the staff from processing the application." Accordingly, the Bureau concluded that the 1:500,000 map scale was a minor error. By contrast, in this case, Winnebago's map is 8 1/2 by 11 inches, a size inadequate for processing purposes. There is not sufficient detail visible on the reduced map to permit processing. Accordingly, the situation in this case is governed by the Commission's holding in *Rem Communication* and is dissimilar from the minor map scale error in *Sun Commu-*

nication. Likewise, in *Petitions for Reconsideration of the Return of Round IV Cellular Applications for Having Defective Maps*, 103 F.C.C.2d 366, 368 (1986), the applicant's map was a photographed composite of four U. S. Geological Survey maps each with a scale of 1:250,000. The photograph was then reduced in size and the applicant submitted the resulting 7 1/2 by 9 1/2 map with a map scale of approximately 1:690,000. Upholding dismissal of the application, the Commission stated that performing engineering calculations on such a small map was "virtually impossible." *Id*. The reduction of Winnebago's map also renders it too small a scale to permit making the engineering calculations required during processing.

14. We conclude that Winnebago's application omitted an important informational showing and failed to comply with the Commission's rules. This omission renders the application defective pursuant to Section 22.20 of the Commission's Rules. The application may not be amended because it is not acceptable for filing. Accordingly, we must dismiss Winnebago's application.

ORDERING PARAGRAPH

15. WHEREFORE, the foregoing premises considered, IT IS HEREBY ORDERED that the Petition for Reconsideration filed by Winnebago Cooperative Telephone Association IS DENIED and the Mobile Services Division's dismissal of Winnebago Cooperative Telephone Association's application IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] On May 15, 1989, in response to the dismissal of its application, Winnebago submitted a map on a scale of 1:250,000.

[2] As Winnebago points out, the letter dismissing its application also cited Section 22.913(a)(2) of the Commission's Rules, which governs information to be filed with applications for Metropolitan Statistical Areas (MSAs), rather than Section 22.923(a)(1) which governs information to be filed with applications for Rural Service Areas. The identification of which rule was violated was a typographical error. The MSD dismissed the application pursuant to Section 22.923(a)(1) of the Rules.

[3] In the *Further Order on Reconsideration*, 53 Fed. Reg. 18562, 18564 - 18565 (May 24, 1988), 64 Rad. Reg. 2d (P&F) 1360 (1988), in which Section 22.923 was first adopted, the rule stated in part:

> (a) Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. The following exhibits shall be attached to any such application:
>
> (1) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in Section 22.903(a). In addition, this shall include an 8 1/2 by 11 inch reduced copy of the 1:250,000 scale map [required by Section 22.903(a)]. The full-size map need not be included in the microfiche copies of the application[, but must be present in the original application] from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

(Language in the foregoing passage which was deleted by the *Erratum* has been enclosed in brackets. Language added by the *Erratum* is underlined in the following text of the present rule section.)

> (a) * * *
>
> (1) . . . In addition, this *exhibit* shall include an 8 1/2 by 11 inch reduced copy of a 1:250,000 *or 1:500,000 scale map, depicting the complete RSA and any CGSA (s) therein. Boundaries of the RSA, CGSA(s), and 39dBu contours must be clearly indicated.* The full-size map need not be included in the microfiche copies of the application from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

[4] Section 22.903(a)(1) states, in pertinent part, as follows:

> The CGSA must be drawn on one or more U.S. Geological survey maps with a scale of 1:250,000. For RSA's the CGSA map need only depict the area(s) encompassed by any CGSA(s) within the RSA (and that portion of the RSA visible on the map) . . .

Section 22.923(a)(1) states, that "this exhibit shall include an 8 1/2 by 11 inch reduced copy of a 1:250,000 or 1:500,000 scale map, depicting the complete RSA and any CGSA(s) therein."

[5] This scale may be necessary in order for an applicant to depict the entire boundary of its RSA, as required by Section 22.923(a)(1) and in distinction to Section 22.903(a)(1), which requires that an applicant depict only that portion of its RSA that is visible on the 1:250,000 scale map.

[6] *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870-71 & nn. 118 & 120 (D.C. Cir. 1979).

[7] *Expressio unius est exclusio alterius*. *See* Norman J. Singer, Statutes and Statutory Construction, § 47.23 (4th ed. 1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-59

In re Applications of

NEWBURGH BROADCASTING CORPORATION (hereafter "Newburgh") File No. BPH-880322MC

RUTH H. STEELE (hereafter "Steele") File No. BPH-880323MI

OWEN-DUMEYER PARTNERSHIP (hereafter "Owen-Dumeyer Partnership") File No. BPH-880324NN

TBS BROADCASTING COMPANY (hereafter "TBS") File No. BPH-880324NT

For A Construction Permit
for a New FM Station on Channel 291A
(106.1 MHz)
in Newburgh, Indiana

HEARING DESIGNATION ORDER

Adopted: February 7, 1990 **Released: March 7, 1990**

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. TBS has not completed Item 4 correctly. TBS's application does not list the applicant and the other required information pertaining to the applicant. Accordingly, TBS must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

3. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last day for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed:

APPLICANTS	DATE AMENDMENTS FILED
Newburgh	April 24, 1989
Owen-Dumeyer	August 30, 1988

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That TBS shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Newburgh and Owen-Dumeyer ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-81

In re Applications of

SUSAN I. WATERS (hereafter "Waters") — File No. BPH-880527MQ

KEITH B. BUSSMAN d/b/a K B BROADCASTING (hereafter "KB") — File No. BPH-880602NH

CHARLES AND JOSEPHINE STONE d/b/a FORT BRAGG BROADCASTING CO. (hereafter "FBB") — File No. BPH-880602ON

For Construction Permit
for a New FM Station on Channel 244A
(96.7 MHz) in Fort Bragg, California

HEARING DESIGNATION ORDER

Adopted: February 16, 1990; Released: March 7, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *KB*. The antenna height above average terrain (HAAT) given in FCC Form 301, Section V-B, Item 7(b)(3), disagrees with the antenna HAAT calculated from the eight radials given in Section V-B, Item 19. The discrepancy is neither a tenderability defect nor an acceptability defect and may be remedied by an amendment. Accordingly, KB will be required to submit a corrective amendment to the presiding Administrative Law Judge, within 30 days after this Order is released.

3. Commission engineering studies indicate that KB and FBB's proposals may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin NO. 65 (October 1985). Consequently, we are concerned that KB and FBB may have failed to comply with the newly revised environmental criteria set forth in the *Report and Order* in Gen Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the newly revised rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in the newly added 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in the newly revised 47 C.F.R. §1.1311. 47 C.F.R. §1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since KB and FBB's proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, they will each be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the effects of the proposed operation and all nearby RF sources. In this regard, if the site is presently fenced, in compliance with the guidelines, KB and FBB are required to so state and give the distance from the base of the tower to the fence. Accordingly, KB and FBB will each be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. §1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. FBB has not completed Item 4 correctly. FBB's application only has the city and state as the residence address for both principals. Accordingly, FBB must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to KB or FBB in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, KB shall submit a corrective amendment to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, KB and FBB shall each submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That FBB shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-71

In re Applications of

CHEROKEE BROADCASTING CORPORATION (hereafter "Cherokee")	File No. BPH-880204MJ
RADIO CENTRE, INC. (hereafter "RCI")	File No. BPH-880209MF
BAKER ENTERPRISES, INC. (hereafter "Baker")	File No. BPH-880210MO

For Construction Permit for a
New commercial FM Station on
Channel 290A in Centre, Alabama

ERRATUM

Released: March 5, 1990

The channel identified in the Centre, Alabama hearing designation order was incorrectly identified as Channel 219A. It should be Channel 290A as shown above.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 90-56

In the Matter of

Amendment of Part 2 of the Commission's Rules to Allocate Spectrum for Mobile-Satellite Services in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands — RM-6459

NOTICE OF PROPOSED RULE MAKING

Adopted: February 8, 1990; Released: March 5, 1990

By the Commission:

1. By this action, the Commission proposes to allocate an additional 33 MHz of spectrum in the 1530-1544 MHz and 1626.5-1645.5 MHz bands for generic mobile-satellite service (MSS). This action responds, in part, to a Petition for Rule Making (RM-6459) filed by Geostar Messaging Corporation (GMC) on July 16, 1988, requesting that the spectrum under consideration be allocated for a new digital land mobile-satellite service (DLMSS).

BACKGROUND

2. The Commission first addressed frequency allocations for mobile-satellite service in 1984 when it initiated a *Notice of Proposed Rule Making* in GEN Docket No. 84-1234.[1] In that proceeding, the Commission proposed to allocate spectrum, to establish technical and regulatory guidelines, and to select a licensee for the MSS. Comments from interested parties were requested concerning appropriate frequencies, technical standards, and service limitations for the MSS. In addition, the Commission invited interested parties to submit applications for authority to construct, launch, and operate a mobile-satellite system. In response, the Commission received numerous comments addressing the frequency allocation and regulatory issues and twelve applications proposing various mobile-satellite systems.

3. On July 24, 1986, the Commission adopted a *Report and Order* (*Allocation Order*) providing 27 MHz of spectrum for MSS in the 1545.0-1558.5/1646.5-1660.0 Mhz bands.[2] Specifically, the Commission allocated two 13.5 MHz segments for shared use by MSS and the aeronautical mobile satellite (R) service (AMSS(R)) as follows:

- Two 4.5 MHz band segments for (1545.0-1549.5/1646.5-1651.0 MHz) for AMSS(R) on a primary basis with MSS permitted on a secondary basis, and
- Two 9 MHz segments (1549.5-1558.5/1651.0-1660.0 MHz) for shared use by AMSS(R) and MSS with a footnote indicating that AMSS(R) will have priority access over MSS in this spectrum.

In addition, two 0.5 MHz segments at 1558.5-1559.0 MHz and 1660.0-1660.5 MHz that were available for AMSS(R) on a primary basis were left unchanged. The Commission determined that these allocations would provide spectrum for developing an MSS, while maintaining the needed flexibility for meeting future AMSS(R) requirements.

4. On December 19, 1986, the Commission adopted a *Second Report and Order* (*Licensing Order*), which established general licensing policies for the MSS in the bands 1545.0-1558.5 MHz and 1646.5-1660 MHz. [3] In the *Licensing Order*, the Commission found that its MSS goals would best be achieved for the first generation, given the limited amount of spectrum available, by authorizing one jointly-owned MSS system for the space segment. Therefore, the Commission instructed those applicants who satisfied its basic qualification requirements to form a joint venture and propose a mobile-satellite system to operate in accordance with the general licensing provisions.

5. The 1987 Mobile WARC was subsequently held to address, *inter alia*, international mobile-satellite allocations. Prior to the 1987 Mobile WARC, the international *Radio Regulations* separately allocated L-band spectrum to the maritime mobile-satellite service (MMSS) and to AMSS(R). Specifically, the 1530-1544 MHz and 1626.5-1645.5 MHz bands were allocated to MMSS, while the 1545-1559 MHz and 1646.5-1660.5 MHz bands were allocated to AMSS(R). In preparation for the 1987 Mobile WARC, the U.S. proposed a generic MSS allocation so that aeronautical, maritime, and land mobile-satellite services (LMSS) could share spectrum throughout these bands on an equal basis.[4] The U.S. reasoned that such a generic scheme would provide for an allocation that retained the flexibility necessary for the development of a new MSS system in the L-band, while maintaining adequate spectrum for the growth of aeronautical and maritime safety services.

6. The consensus for L-band mobile allocations at the 1987 Mobile WARC was different from the United States proposal.[5] The Final Acts for the 1987 Mobile WARC provide for the following L-band mobile-satellite allocations:

> 1530-1533/1631.5-1634.5 MHz (6 MHz) - LMSS/MMSS on a co-primary basis (this spectrum was previously allocated for MMSS);
>
> 1533-1544/1626.5-1631.5/1634.5-1645.5 MHz (27 MHz) - MMSS primary with LMSS on a secondary basis for non-speech, low bit-rate data (this spectrum was previously allocated exclusively for MMSS);
>
> 1545-1555/1646.5-1656.5 MHz (20 MHz) - aeronautical mobile-satellite (R) service on an exclusive primary basis; and
>
> 1555-1559/1656.5-1660.5 MHz (8 MHz) - land mobile-satellite service (LMSS) on an exclusive primary basis (this spectrum was previously allocated for AMSS(R)).[6]

The United States delegation took a reservation to this L-band allocation decision. The reservation provides in pertinent part that:

> The United States, in view of the fact that the Conference has unduly restricted allocations for mobile-satellite services in the bands 1530-1559 MHz and 1626.5-1660.5 MHz, states its intention to utilize these bands in the way most appropriate to satisfy its particular mobile-satellite services requirements recognizing the priority of AMSS(R) and maritime safety requirements.[7]

7. Following the Mobile WARC, the Aviation Parties filed a petition for further reconsideration of the Commission's *Reconsideration Order*. In their petition, the Aviation Parties requested that the Commission conform the U.S. allocations for AMSS(R) and LMSS in the L-band to those adopted at the 1987 Mobile WARC.[8] On May 31, 1989, the Commission released a *Memorandum Opinion and Order* denying the Aviation Parties' Petition for Reconsideration.[9] The Commission stated that full consideration was given to the needs of the aeronautical safety services in the earlier MSS allocation decisions. The Commission noted that its allocation provided a greater amount of spectrum for AMSS(R) than did the international allocation, as well as providing more primary spectrum for MSS. The Commission pointed out that its allocation would encourage investment in a new MSS system and would better serve both AMSS(R) and MSS. Thus, the Commission concluded that its decision in the *Allocation Order*, as affirmed in the *Reconsideration Order*, was correct.

THE GMC PETITION

8. On June 16, 1988, GMC filed a *Petition for Rule Making* (RM-6459) requesting that the Commission amend its Table of Frequency Allocations by providing a domestic allocation in the 1530-1544 MHz and 1626.5-1645.5 MHz portions of the L-band for a new digital land mobile satellite service (DLMSS). GMC seeks to implement such a DLMSS system to provide low bit-rate data and voice communications on a nationwide basis.[10] It states that its market analysis shows a growing need for these types of services that cannot be met by existing or proposed communication services. GMC also notes that AMSC predicted that the demand for MSS services will far exceed the proposed AMSC system's ability to meet that demand.[11] GMC asserts that the service it envisions cannot be provided by distance and terrain sensitive terrestrial land mobile services. Further, it claims that these services cannot be provided by the licensed domestic MSS system, which it claims is primarily designed for analog voice communications. Therefore, GMC states that DLMSS will supplement the already authorized mobile-satellite services.

9. GMC contends that providing an allocation for additional LMSS use would be consistent with the Commission's policy of promoting competition in the provision of radio services.[12] As a side benefit, it states that allocation of spectrum for its advanced technology DLMSS system may compel terrestrial operators to modernize their services and technologies. In addition, it claims that this allocation will provide further opportunities for U.S. carriers to provide domestic communications services, as well as support U.S. space manufacturing interests. Under its proposal, GMC contends that the U.S. would not be dependent on a foreign entity as a supplier of domestic communications.[13]

10. GMC recognizes that the spectrum allocations it proposes will result in U.S. L-band allocations that are different from those adopted at the 1987 Mobile WARC. It therefore requests that the Commission upgrade the LMSS allocations made at the 1987 Mobile WARC to a co-primary status throughout the LMSS/MMSS L-band in our domestic table. As elaborated upon above, the 1987 Mobile WARC allocated only the bands 1530-1533/1631.5-1634.5 MHz to LMSS and MMSS on a co-primary basis, while it allocated the bands 1533-1544/1626.5-1631.5/1634.5-1645.5 MHz to MMSS on a primary basis and LMSS on a secondary basis. As specified in Footnote 726B of the 1987 Mobile WARC allocation, the secondary LMSS allocation is restricted to non-speech, low bit-rate data. GMC requests that LMSS transmissions be restricted to digital transmissions only and that the low bit-rate restriction be clarified to include rates of 4800 bps or less. As part of its proposal, GMC also initially specified a long-term DLMSS system that would employ transmission directions that were reversed relative to the transmission directions specified in the Table of Frequency Allocations. Subsequently, however, GMC stated that reverse band operation need not be considered as part of its proposal at this time.[14] Finally, GMC states that it intends to use the Ka-band (20/30 GHz) for control links due to congestion in other fixed satellite service bands.

11. *Comments*. The Commission received thirty-two comments responding to GMC's petition.[15] The majority of comments support GMC's petition. These commenters are comprised of various government agencies, associations, corporations, and several individuals. Generally, they state that a need exists for a low-cost, ubiquitous, two-way mobile-satellite service that will support digital communications for data, facsimile, and voice communications. For the most part, these commenters are also potential users of such a service.

12. TexSpace, Inc. (TexSpace), a company that also plans to offer digital data transmission services to mobile users, supports GMC's request for an additional allocation for a digital mobile-satellite service. However, TexSpace argues that the Commission should not rule out proposals for implementation of DLMSS that are different from GMC's. TexSpace urges the Commission to encourage alternative approaches to GMC's proposal.

13. Four commenters, the American Mobile Satellite Corporation (AMSC), Communications Satellite Corporation (COMSAT), Transit Communications, Inc. (Transit), and the United States Coast Guard (Coast Guard) oppose GMC's petition for rule making. In general, these parties contend that the DLMSS proposal will cause harmful interference to co-band and adjacent band users, lacks sufficient justification, and is inconsistent with prior Commission positions. The Department of Defense (DoD) initially supported GMC's proposal. However, after reviewing other comments in this proceeding, it withdrew its support. DoD claims that while the concept of a digital land mobile-satellite system has potentially beneficial applications, the need to protect other services outweighs any gains.

14. COMSAT claims that GMC's DLMSS system is almost certain to cause harmful interference to INMARSAT, the principal occupant of the maritime mobile-satellite band.[16] It contends that frequency discrimination techniques proposed by GMC, including frequency assignment planning and beam shaping, will not alleviate

interference to co-frequency users. Furthermore, it cautions that GMC's proposal for coordinating frequency sharing with INMARSAT would be difficult, if not impossible, to implement. In addition, both COMSAT and the Coast Guard maintain that GMC's DLMSS would create a hazard to maritime distress and safety communications of the Global Maritime Distress and Safety System (GMDSS)[17] because of its potential to interfere with INMARSAT, a major provider of services within the GMDSS. AMSC goes further and argues that GMC's technical proposal will result in harmful interference to other L-band users. In particular, AMSC contends that the strength of emissions from GMC's mobile units will cause interference to AMSC's adjacent band MSS system.

15. COMSAT, AMSC, and Transit assert that GMC's technical proposal is also fundamentally flawed and cannot be implemented. In their comments, they provide technical analyses that they claim demonstrate the infeasibility of GMC's technical proposal.

16. AMSC and COMSAT also argue that GMC's proposal lacks sufficient justification. AMSC contends that because its MSS system can meet any need GMC proposes, GMC's claim that it will offer a unique service is unfounded. In addition, AMSC asserts that, if anything, the subject frequencies should be held in reserve as a backup for its MSS system in the event that the international frequency coordination process leads to a requirement for additional spectrum for its system.[18]

17. AMSC and COMSAT further claim that GMC's proposal is inconsistent with the international Table of Allocations. In particular, AMSC asserts that GMC's proposal to permit mobile units to communicate directly with GMC satellites using L-band frequencies is tantamount to feeder link operation, which is not permitted on L-band frequencies. COMSAT adds that GMC's proposal conflicts with international allocations made at the Mobile WARC to the extent that it (1) elevates the secondary portion of the allocation to a primary status, (2) transmits speech on frequencies restricted to non-speech transmissions, (3) uses L-band frequencies for feeder links, and (4) restricts LMSS transmissions to digital only. Additionally, COMSAT claims that the intention of the 1987 Mobile WARC was to restrict the low bit-rate to 300 bps, not the 4800 bps rate suggested by GMC. Thus, COMSAT contends that the GMC proposal is barred under ITU *Radio Regulations*.

18. Transit contends that the GMC petition embodies a proposal that is no different in substance from a proposal that it filed December 11, 1984, in its Petition for Rule Making to establish an L-band MSS system. Transit states that the Commission rejected that petition, incorporating it as comments in the AMSS/MSS L-band proceeding. Thus, Transit argues that the GMC application is no more than an untimely filed MSS application. Consequently, Transit argues that it would be unfair for the Commission to reconsider its decision to license a single MSS consortium by accepting GMC's petition and application.

19. *Reply Comments*. GMC and other parties submitted reply comments. GMC contends that it has presented sufficient reasons for the institution of a rule making proceeding. According to GMC its proposal for a novel technology to provide a new service is reason enough for acceptance of its petition. It argues that the demand for MSS services will exceed the capacity of the AMSC system and that AMSC itself confirms this. GMC also claims that its advanced system will lead to more efficient orbit and spectrum utilization and will provide unique services that will complement AMSC's offerings.

20. GMC asserts that its proposal is not legally barred by ITU *Radio Regulations*. It states that a nonconforming use of a band may be authorized provided that it does not result in harmful interference to conforming uses of the band by other administrations.[19] According to GMC, none of the four ways in which COMSAT claims its proposal would violate the ITU *Radio Regulations* would increase the likelihood of interference.

21. GMC further claims that it would be in the public interest to allocate spectrum for a second provider of mobile-satellite services rather than reserve the spectrum for AMSC. It contends that holding this spectrum in reserve may preclude the use of the band for LMSS. It further notes that in the long-term INMARSAT intends to use all 33 MHz of spectrum throughout the United States. Thus, GMC argues, if actions to implement a domestic LMSS allocation are not undertaken, future LMSS use of this spectrum by anyone other than INMARSAT may be precluded. Furthermore, GMC states that the public interest would be best served by creating a competitive service rather than extending AMSC's monopoly on the provision of MSS. According to GMC regardless of the outcome of international coordination of the AMSC system, AMSC should have ample spectrum for a viable MSS system. It notes that the Commission had previously determined that the allocated spectrum would be sufficient for a viable MSS system.[20]

22. AMSC notes that the majority of commenters supporting GMC's proposal merely express the need for two-way mobile communications. AMSC asserts that this demand merely demonstrates the need for expeditious processing of its then ungranted application to operate an MSS system.

DISCUSSION

23. Based on our review of the information submitted in response to GMC's petition and our assessment of U.S. communications needs in light of the 1987 Mobile WARC, we are proposing to allocate the frequency bands 1530-1544 MHz and 1626.5-1645.5 for use by the Mobile-Satellite service. We believe that the benefits of such a generic MSS allocation outweigh the concerns raised by the commenters.[21] Further, we believe our proposal as set forth herein provides sufficient safeguards to ensure that important maritime safety-related needs are fully met and protected.

24. We believe that the provision of MSS in this band could lead to more efficient orbit and spectrum utilization. In particular, any spectrum that becomes available domestically may be used to offer satellite service providers the opportunity to provide the public with new and unique services. In addition, in the future the Commission may also consider whether such spectrum might be necessary to help satisfy the spectrum requirements of authorized services, such as MSS, that may require additional spectrum as a result of the international coordination process.[22] In developing this proposal, we note that the 1987 Mobile WARC, in providing for operation of LMSS services in this band, recognized that maritime services may not require all 33 MHz of this spectrum and that sharing between MMSS and other services may be possible. We believe that our proposal for a generic MSS

rather than the more limited LMSS allocation adopted at the 1987 Mobile WARC or the DLMSS allocation suggested by GMC has a number of benefits. First, a generic MSS allocation will provide flexibility to new satellite service providers in developing systems to meet the needs of all mobile users.[23] In addition, a generic MSS allocation in this band would be consistent with our treatment of the related, adjacent bands at 1545-1555/1646.5-1656.5 MHz and 1555-1559/1656.5-1660.5 MHz, which the 1987 Mobile WARC allocated for AMSS(R) and LMSS, respectively.

25. As discussed above, the 1987 Mobile WARC allocated the 1530-1533 MHz (space-to-Earth transmission) and 1631.5-1634.5 MHz (Earth-to-space transmission) bands for shared use by LMSS and MMSS on a coprimary basis. Our proposal to allocate the 6 MHz of spectrum in these bands generically for MSS (i.e. MMSS, LMSS, and AMSS), which will also permit AMSS operations within these bands, generally comports with the international allocation adopted at the 1987 Mobile WARC. The bands 1533-1544 MHz (space-to-Earth transmission), 1626.5-1631.5 MHz (Earth-to-space transmission), and 1634.5-1645.5 MHz (Earth-to-space transmission), were allocated at the 1987 Mobile WARC for primary use by MMSS and secondary use by LMSS. Further, the secondary LMSS allocation was restricted to non-speech, low bit-rate data communications. Our proposal for a generic MSS allocation would permit equal use by the MMSS, AMSS, and LMSS. As noted above, ITU Radio Regulation No. 342 permits administrations to allocate spectrum for nonconforming uses so long as the nonconforming use does not cause harmful interference to the conforming uses as established in the ITU *Radio Regulations*. We believe that a nonconforming, generic MSS allocation would be in the public interest and that conforming and nonconforming uses can be accommodated with the appropriate international coordination.

26. We recognize that adequate spectrum must be available in these bands for important maritime safety-related services such as the GMDSS, and that these services must be protected from harmful interference. Accordingly, we propose to give maritime mobile-satellite distress and safety communications priority within these bands. Under the Final Acts of the 1987 Mobile WARC, distress and safety communications are those indicating that: 1) a mobile unit or person is in distress and requires immediate assistance; 2) the calling station has a very urgent message concerning the safety of a mobile unit or a person; and 3) the calling station has an important navigational or meteorological warning to transmit.[24] Such maritime distress and safety communications may include such traffic as transmission of maritime safety information, distress calls and traffic, acknowledgment and relaying of distress calls, search and rescue coordination communications, ship movement service communications, radionavigation-related communications, navigational and meteorological warnings, meteorological observations, ship position reports, and MEDICO/MEDIVAC. Each of these safety-related communications are provided for in the GMDSS.

27. To implement this policy we propose to add a new footnote US315 to the Commission's Table of Frequency Allocations that would provide MMSS distress and safety communications with real-time, priority preemptive access throughout the subject bands. We seek comment on the manner by which this priority could be provided.[25] Therefore, any system operating in these bands would be required to be coordinated internationally with the INMARSAT system. As we stated above, INMARSAT, currently the only satellite communications system capable of meeting the global coverage requirements of the GMDSS, will be a major element of the total GMDSS system. We request comments on how to best implement or integrate these safety-related maritime needs with the provision of MSS. To the extent the spectrum is shared, each separate system would be required to incorporate some means of providing real-time, priority preemptive access to distress and safety communications. For example, as the GMDSS distress and safety communications to be provided by INMARSAT will include coverage of major inland waterways and the Great Lakes, a potential MSS provider in the subject spectrum would need to coordinate operations with INMARSAT over a substantial area of the United States.[26] We seek comments on the feasibility and means of coordinating MSS and MMSS operations.

28. Our proposal does not include the restrictions contained in Footnote 726B of the 1987 Mobile WARC allocation that limit LMSS communications in the 1533-1544/1626.5-1631.5/1634.5-1645.5 MHz bands to non-speech, low bit-rate data. We see no reason to limit the transmissions of domestic MSS operators using these bands. Nonetheless, we seek comment on issues related to these restrictions. As noted in the comments above, GMC believes it would be appropriate to provide digital voice. Additionally, GMC and COMSAT disagree over what the 1987 Mobile WARC considered a low bit-rate. Thus, with respect to those bands subject to Footnote 726B of the 1987 Mobile WARC, commenters are invited to address whether communications should be restricted to digital transmissions and, if so, the appropriate bit-rate. We also seek comment on whether communication should be restricted to non-speech, data only.

29. As we noted above, GMC had initially proposed a long-term system that would employ reverse band transmissions. Several commenters expressed serious technical concerns with respect to this aspect of GMC's proposed system. We believe that allowing reverse band operation in the mobile-satellite services at this time is infeasible. Because of severe mobile-to-mobile interference, reverse band operation would restrict MSS mobile terminals to operation in areas outside of those in which INMARSAT Standard-C and aeronautical data terminals operate. As a practical matter, it would be nearly impossible to prevent MSS mobiles from operating within these restricted areas. In addition, reverse band operation would require that existing MMSS system operators invest in additional hardware and software to make this type of sharing workable. Because of the interference potential between systems and the additional burdens that would be imposed on the existing operator in the MMSS spectrum, reverse band operation will not be permitted.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

30. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reason for Action

This action is being initiated in order to provide an allocation to allow sharing between land mobile-satellite services, maritime mobile-satellite services, and aeronautical mobile-satellite services in the 1530-1544 MHz and

1626.5-1645.5 MHz bands. We believe that sharing among the services in these bands is feasible and will best serve the public interest. We also intend to protect the integrity of the GMDSS by providing maritime mobile-satellite distress and safety communications with priority and preemptive access to the subject spectrum.

II. Objective

The objective of this proposal is to continue the United States goal of establishing a generic mobile-satellite service in the L-Band. This goal will allow flexibility in implementing a new service that will satisfy an ever increasing national demand for a ubiquitous communications service.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r). These sections authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of radio in the public interest.

IV. Description, Potential Impact, and Number of Small Entities Affected

This proposal may provide marketing opportunities for radio manufacturers, some of which may be small businesses. Because this proposal only concerns the allocation of spectrum, as opposed to the licensing of systems or stations, we are unable to quantify any other potential effects on small entities. We invite specific comments on this point by interested parties.

V. Reporting, Record Keeping and other Compliance Requirements

None.

VI. Federal Rules which Overlap, Duplicate or Conflict with this Rule

None.

VII. Significant Alternatives

This proposal will allow mobile-satellite services to share spectrum, on a co-primary basis, with the maritime mobile-satellite service. We are proposing only a general allocation at this time. Specific technical standards, rules, and regulations will be determined in future proceedings. Our immediate proposal allows for maximum flexibility in determining the specific mobile-satellite system(s) that may ultimately be authorized to use this spectrum. We will not solicit applications to operate the service until rules and policies are finalized.

31. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

32. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

33. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

34. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

35. This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r).

36. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **May 11, 1990,** and reply comments on or before **June 11, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

37. For further information concerning this rule making contact Mr. Damon C. Ladson at (202) 653-8106, Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

PROPOSED RULE CHANGES

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

AUTHORITY: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by adding the Land Mobile-Satellite Service and listing footnote US315 in columns 4 and 5 for the bands 1530-1535 MHz, 1535-1544 MHz and 1626.5-1645.5 MHz and by adding the text of footnote US315 to the list of footnotes at the end of the table as follows:

Section 2.106 Table of Frequency Allocations

United States table

Government Allocation (MHz)	Non-Government Allocation (MHz)
(4)	(5)
* * *	* * *
1530-1535	1530-1535
MARITIME MOBILE-SATELLITE (space-to-Earth).	MARITIME MOBILE-SATELLITE (space-to-Earth).
Mobile (aeronautical telemetering).	Mobile (aeronautical telemetering).
MOBILE-SATELLITE (space-to-Earth). 722 US78 US272 US315	MOBILE-SATELLITE (space-to-Earth). 722 US78 US272 US315
1535-1544	1535-1544
MARITIME MOBILE-SATELLITE (space-to-Earth).	MARITIME MOBILE-SATELLITE (space-to-Earth).
MOBILE-SATELLITE (space-to-Earth).	MOBILE-SATELLITE (space-to-Earth).
722 US315	722 US315
* * *	* * *
1626.5-1645.5	1626.5-1645.5
MARITIME MOBILE-SATELLITE (Earth-to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).
MOBILE-SATELLITE (Earth-to-space).	MOBILE-SATELLITE (Earth-to-space).
722 US315	722 US315

* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

US315

In the frequency bands 1530-1544 MHz and 1626.5-1645.5 MHz Maritime Mobile-Satellite distress and safety communications, *e.g.*, GMDSS, shall have priority access with real-time preemptive capability in the Mobile-Satellite service. Communications of Mobile-Satellite system stations not participating in the GMDSS shall operate on a secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

* * * * *

APPENDIX B

Comments

1. Advanced Technology, Inc.
2. Altman Brothers Construction
3. American Mobile Satellite Corporation
4. Apple Computer, Inc.
5. Arbor International, Inc.
6. BDM Corporation
7. Citnalta Corporation
8. Communications Satellite Corporation
9. CooperVision Silco
10. David Odom, M.D.
11. Department of Defense
12. Friesma & Associates, Inc.
13. Geostar Messaging Corporation
14. Hewlett-Packard
15. Intermet Corporation
16. International Association of Fire Fighters

17. International Association of Natural Resource Pilots
18. Lake Carriers Association
19. Megahertz Corporation
20. Nova-Net Communications, Inc.
21. Raestro-Sat, Inc.
22. Railstar Control Technology, Inc.
23. Ronald Bobo
24. Satellite Systems Engineering, Inc.
25. TexSpace, Inc.
26. Transit Communications, Inc.
27. United States Bureau of Land Management
28. United States Coast Guard
29. Voice Computing, Inc.
30. William E. Standing
31. Zenith Data Systems, Inc.

Reply Comments

1. Aeronautical Radio, Inc.
2. American Mobile Satellite Consortium
3. Communications Satellite Corporation
4. Department of Defense
5. GE Astro Space
6. Geostar Messaging Corporation
7. State of Hawaii

FOOTNOTES

[1] *See Notice of Proposed Rule Making (Notice)*, GEN Docket No. 84-1234, 50 FR 8149 (1985).

[2] *See Report and Order*, GEN Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 1825 (1986).

[3] *See Second Report and Order*, GEN Docket No. 84-1234, 2 FCC Rcd 485 (1987). On September 17, 1987, the Commission adopted a *Memorandum Opinion and Order (Reconsideration Order)* addressing Petitions for Reconsideration of the *Allocation Order*. *See Memorandum Opinion and Order*, GEN Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 6830 (1987). In the *Reconsideration Order*, the Commission noted that the issues raised by the petitioners had been discussed at length in the *Allocation Order*. As these parties failed to present any new information, the Commission denied their petitions and affirmed its previous allocation decision.

[4] *Report and Order*, GEN Docket No. 84-607, 2 FCC Rcd 821 (1987).

[5] Although the U.S. proposal was not adopted at the 1987 Mobile WARC, the Conference invited the International Radio Consultative Committee (CCIR) of the International Telecommunication Union (ITU) in Resolution No. 208 (MOB-87) to study the technical and operational aspects of mobile-satellite systems. *See Conclusion of the Interim Meeting of Study Group 8 Doc 8 / 256*, Mobile-Satellite Services (Aeronautical, Land, Maritime, Mobile, and Radiodetermination), Aeronautical Mobile Service, VIII-3, Geneva, Switzerland, April 20-May 6, 1988.

[6] Section 730A, Article 8, of the Final Acts of the 1987 Mobile WARC provides that, "administrations may also authorize aircraft earth stations and ship earth stations to communicate with space stations in the land mobile-satellite service."

[7] *See* Statement No. 58, Final Protocol (Mob-87). International Telecommunication Union (ITU) *Radio Regulation* No. 342 (Article 6, Section 4) allows administrations to assign frequencies for uses that do not operate in accordance with the Table of Frequency Allocations, as long as harmful interference is not caused to services that operate in accordance with the Table of Frequency Allocations. In the United States the bands 1530-1544 MHz and 1626.5-1645.5 MHz are currently allocated to the maritime mobile-satellite service on a primary basis. The mobile (aeronautical telemetering) service is allowed in the 1530-1535 MHz band on a secondary basis.

[8] Aviation Parties' Petition for Further Reconsideration filed December 28, 1987.

[9] *See Memorandum Opinion and Order* (Further Reconsideration Order), GEN Docket No. 84-1234, 4 FCC Rcd 6016 (1989).

[10] In order to expedite the implementation of a DLMSS system, GMC has concurrently filed an application to construct, launch, and operate its proposed system.

[11] *See* Application of American Mobile Satellite Consortium, File Nos. 1629-DSS-P/L, Part I at 3.

[12] GMC seeks only an LMSS allocation, rather than a more generic MSS allocation.

[13] In its petition, GMC claims that allocating spectrum for DLMSS will not cause economic harm to the International Maritime Satellite Organization (INMARSAT). GMC notes that INMARSAT's role is principally the provision of off-shore maritime services. Thus, GMC concludes that INMARSAT's principal revenue source, providing maritime mobile-satellite services and land mobile-satellite services in countries other than the U.S., will not be affected by its DLMSS.

[14] *See* GMC's *Motion to Strike and Contingent Intent to File a Response* (RM-6459), at page 4.

[15] A list of commenters is provided in Appendix B.

[16] INMARSAT provides maritime satellite services to ships and offshore facilities throughout the world. Its membership is composed of fifty-five nations. COMSAT is the United States's signatory to INMARSAT.

[17] GMDSS is the future international distress alerting system that will replace Morse Code telegraphy based systems now required to be carried on board ships. At the Conference of Contracting Governments to the International Convention for the Safety of Life held in London, England in November of 1988, the International Maritime Organization (IMO) adopted amendments to the 1974 Safety of Life at Sea Convention to formally implement the GMDSS. The GMDSS will come into force in 1992 and will be fully implemented internationally in 1999. For further information *see Public Notice*, DA 89-28, 4 FCC Rcd 792 (1989).

[18] *See Opposition of American Mobile Satellite Consortium, Inc.*, (RM-6459), at page 16.

[19] *See ITU Radio Regulations*, Ch. 3, Art. 6, Section 4 (no. 342) (1982).

[20] *See Report and Order*, GEN Docket Nos. 84-1231, 84-1233, and 84-1234, *supra*, at para. 155.

[21] A number of commenters raised concerns about the potential for intererence from GMC's proposed DLMSS system to the INMARSAT system. In view of the fact that we are not proposing to authorize specific systems herein, it is premature to address these comments in detail at this time. Moreover, until such time as we know the technical characteristics of the system that will ultimately use this spectrum, we cannot determine the extent to which we can coordinate with co-band and adjacent band systems so as to eliminate the potential for interference.

[22] For example, additional MSS spectrum would provide greater negotiating flexibility to ensure that the spectrum needs of AMSC, the authorized MSS licensee in the bands 1545-1558.5/1646.5-1660 MHz are better met. In GEN Docket No. 84-1234, the Federal Aviation Administration concluded that

there would be a continuing debate regarding the amount of spectrum that may be required for future aeronautical safety needs. It anticipates that AMSS will require a substantial portion of the current MSS band. At the same time, AMSC has predicted growth beyond the current capacity of its system. Finally, until international coordination of the spectrum currently allocated for MSS services is completed, it is not possible to determine the amount of spectrum which will be available in the United States for domestic operations.

[23] At this time, we do not intend to accept applications for a permanent MSS satellite system to use this band, including GMC's application, until the allocation proposals contained herein are finalized. We will, however, process all pending applications, and entertain any future applications, for interim MSS using INMARSAT's space segment that operates in these bands.

[24] *See* Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB-87), Nos. N3112, N3206, and N3229.

[25] An MSS licensee operating its own system may wish to become part of the GMDSS system in order to provide the required priority to MMSS distress and safety communications. IMO approval would be required for the MSS licensee to become part of the GMDSS.

[26] INMARSAT has advanced published, with the IFRB, the 1530-1544/1626.5-1645.5 MHz and 1545-1559/1646.5-1660.5 MHz bands for its third generation satellite system.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-85

In the Matter of

Amendment of Section 73.202(b), RM-7147
Table of Allotments,
FM Broadcast Stations.
(Greenville, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by First Greenville Corporation (petitioner), licensee of Station KIKT(FM) at Greenville, Texas, requesting the substitution of Channel 228C2 for Channel 228A at Greenville. Petitioner also seeks the modification of its license for Station KIKT(FM) to specify operation on the higher powered channel. Petitioner asserts that the operation of Station KIKT(FM) on the higher powered channel will enable it to provide expanded service to Greenville and the surrounding area. Therefore, petitioner expresses its interest in applying for the channel, if allotted.

2. Channel 228C2 can be substituted for Channel 228A at Greenville in compliance with the Commission's minimum distance separation requirements at the site specified by the petitioner.[1] We note that this proposal is short-spaced to several pending applications for Channel 227C2 at Haltom City, Texas.[2] If this proposal is ultimately adopted the applicants will be permitted to amend their applications to specify a site in conformance with the spacing requirements and retain cut-off protection. We shall serve copies of this *Notice* on the applicants.

3. We shall propose to modify the license of Station KIKT(FM) at Greenville to specify operation on Channel 228C2 in lieu of Channel 228A, as requested, in accordance with Section 1.420(g) of the Commission's Rules. Accordingly, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Greenville.

4. In view of the fact that Greenville and the surrounding area could receive an expanded broadcast radio service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Greenville, Texas	228A	228C2

5. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following applicants for Channel 227C2 at Haltom City, Texas:

Madalina Broadcasting, Inc.
4308 Fannin Drive
Irving, TX 75038

Texas Communications, Inc.
2000 West Glades Rd #206
Boca Raton, FL 33431

Melanie Bruton
5122 Pearl Drive
North Richland Hills, TX 76180

Lenox Broadcasting Corporation
2033 M Street, N.W., #207
Washington, D.C. 20036

Q Prime Inc.
212 11th Street
Hoboken, NJ 07030

Joh W. Barger
2819 Woodcliffe, #204
San Antonio, TX 78230

Michael C. Nelms
1306 April Way
Herndon, VA 22070

Scottlite, Inc.
1038 San Jacinto #237
Irving, TX 75063

Haltom City Radio Partners
6215 Park Lane
Dallas, TX 75225

Tarrant County ED Foundation
2714 Monterrey
Arlington, TX 76015

Lin-Mar Broadcasting, Inc.
2525 Trossock Lane
St. Louis, MO 63122

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper

procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

J. Dominic Monahan, Esq.
Dow, Lohnes & Albertson
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The site is located 24.8 kilometers (15.4 miles) northeast of Greenville at coordinates 33-17-19 and 95-54-57.

[2] The proposal is short-spaced to eleven of the twenty-eight pending applications. The short-spaced applications were filed by Madalina Broadcasting, Inc. (BPH-890921MB), Texas Communications, Inc. (BPH-890921MK), Melanie Bruton (BPH-890921NG), Lenox Broadcasting Corporation (BPH-890921MY), Q Prime Inc. (BPH-890921MF), John W. Barger (BPH-890921NC), Michael C. Nelms (BPH-890921MT), Scottlite, Inc. (BPH-890921ME), Haltom City Radio Partners (BPH-890921MO), Tarrant County ED Foundation (BPH-890921MA), and Lin-Mar Broadcasting, Inc. (BPH-890921MG).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-86

In the Matter of

Amendment of Section 73.202(b), RM-7155
Table of Allotments,
FM Broadcast Stations.
(Portage, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by WIBU, Inc. (petitioner), requesting the allotment of Channel 2 A to Portage, Wisconsin, as that community's second local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Channel 240A can be allotted to Portage consistent with the Commission's minimum distance separation requirements with a site restriction of 10.5 kilometers (6.5 miles) southwest of the city.[1] The site restriction is necessary in order to avoid a short spacing to a pending proposal to substitute Channel 241C3 for Channel 244A at Oshkosh, Wisconsin.[2] However, it should be noted that if Channel 240A is ultimately allotted to Portage, Station WMLI(FM), Channel 242B1 at Sauk City, Wisconsin, will not be permitted to relocate its transmitter site in accordance with its application (BPH-890829IG). Therefore, we shall serve the licensee of Station WMLI(FM) with a copy of this *Notice*.

3. In view of the fact that Portage, Wisconsin, could receive its first local FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Portage, Wisconsin	261A	240A, 261A

4. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Return Receipt Requested, to the following: ODON Madison Limited Partnership, 4610 University Avenue, 1200, Madison, WI 53705.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

David H. Bornstein
Vice-President and Secretary
WIBU, Inc.
WIBU Road
Poynette, WI 53955
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The restricted site coordinates are 43-29-50 and 89-34-27.

[2] *See* the counterproposal filed in MM Docket No. 89-282, 4 FCC Rcd 4904 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-87

In the Matter of

Amendment of Section 73.202(b), RM-7073
Table of Allotments,
FM Broadcast Stations.
(Marathon and Stevens Point,
Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. Eagle of Wisconsin, Inc. (petitioner), licensee of Station WMGU(FM), Channel 285A, Stevens Point, Wisconsin, has filed a petition for rule making requesting the substitution of Channel 285C3 for Channel 285A at Stevens Point, Wisconsin, the change of the community of license for Channel 285 from Stevens Point to Marathon, Wisconsin, and the modification of the license of Station WMGU(FM) to specify operation on Channel 285C3 at Marathon. Petitioner submits information in support of its proposal and states its intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration. The proposal could provide Marathon (population 1,552)[1] with its first local FM service while local broadcast service at Stevens Point (population 22,970) is provided by co-owned Stations WSPO(AM) and WSPT(FM).[2] The proposal is mutually exclusive with the present operation of Station WMGU(FM) on Channel 285A.

3. Channel 285C3 can be allotted to Marathon at the site specified by the petitioner in compliance with the Commission's minimum distance separation requirements. [3] Therefore, as requested, we shall propose to modify the license of Station WMGU(FM) to specify operation on Channel 285C3 at Marathon in accordance with Sections 1.420(g) and (i) of the Commission's Rules. We shall not accept competing expressions of interest in the use of Channel 285C3 at Marathon nor require the petitioner to demonstrate the availability of an additional equivalent class channel at Marathon.

4. In view of the fact that Marathon, Wisconsin, could receive its first local FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
Marathon, Wisconsin	—	285C3
Stevens Point, Wisconsin	250C1, 285A	250C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John E. Fiorini, III, Esq.
Mark Van Bergh, Esq.
Gardner, Carlton and Douglas
1001 Pennsylvania Avenue N.W.
Suite 750
Washington, D.C. 20004
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Population figures are taken from the 1980 U.S. Census.

[2] Both stations are licensed to Americus Communication No. 1 Limited Partnership.

[3] The restricted site is located 12.9 kilometers (8 miles) southeast of the city at coordinates 44-49-40 and 89-45-33.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-88

In the Matter of

Amendment of Section 73.202(b), RM-6981
Table of Allotments,
FM Broadcast Stations.
(West Monroe, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Phoenix Broadcasting Company (petitioner), licensee of Station KYEA(FM), Channel 252C2, West Monroe, Louisiana, seeking the substitution of Channel 252C1 for Channel 252C2 at West Monroe, and the modification of its license to specify operation on the higher class co-channel. Petitioner states it will apply for the channel, if allotted.

2. Channel 252C1 can be substituted for Channel 252C2 consistent with the Commission's minimum distance separation requirements with a site restriction of 46.5 kilometers (28.9 miles) southeast of the city.[1] The restriction is necessary in order to avoid a short spacing to Station KPCH(FM), Channel 251C, Dubach, Louisiana.[2] In addition, this proposal is contingent upon Station KISY(FM) at Tioga, Louisiana, receiving a license to operate on Channel 278C2 in accordance with its outstanding construction permit (BPH-890303IB). Therefore, we shall not finalize this proceeding until the Tioga station is licensed accordingly.

3. As requested, we shall propose to modify the license of Station KYEA(FM) at West Monroe, Louisiana, to specify operation on Channel 252C1 in lieu of Channel 252C2 in accordance with Section 1.420(g) of the Commission's Rules. We shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at West Monroe.

4. In view of the fact that West Monroe and the surrounding area could receive expanded FM coverage, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
West Monroe, Louisiana	252C2	252C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Bradford D. Carey, Esq.
Ashton R. Hardy, Esq.
Walker, Bordelon, Hamlin,
Theriot & Hardy
701 S. Peters St.
New Orleans, LA 70130
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The restricted site coordinates are 32-11-49 and 91-49-58.

[2] Petitioner indicates its willingness to relocate its transmitter site in order to accomplish the upgrade. However, the site specified by the petitioner, at coordinates 32-33-29 and 91-48-23, was mutually exclusive with a separate proposal to allot Channel 252C3 to Cleveland, Mississippi, in MM Docket No. 89-415, 4 FCC Rcd 7063 (1989). Therefore, in order to avoid the conflict we determined the availability of an alternative site.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-89

In the Matter of

Amendment of Section 73.202(b), RM-7129
Table of Allotments,
FM Broadcast Stations.
(McCleary, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. At the request of Susan M. Ciborosky (petitioner), the Commission considers herein a petition for rule making seeking the allotment of Channel 245C3 to McCleary, Washington, as that community's first local FM service. Petitioner states an intention to apply for the channel, if allotted.

2. Channel 245C3 can be allotted to McCleary in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 kilometers (1 mile) south of the city.[1] The site restriction is required in order to avoid a short spacing to Canadian Station CKKS-FM, Channel 245C at Vancouver, British Columbia. In addition, since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for the proposal.

3. In view of the fact that McCleary, Washington, could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
McCleary, Washington	---	245C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Susan M. Ciborosky
1608 Highland Avenue
Hubertus, WI 53033
(Petitioner)

Larry G. Fuss
Contemporary Communications
P. O. Box 159
Fayetteville, GA 30214
(Consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates are 47-02-20 and 123-16-28.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-90

In the Matter of

Amendment of Section 73.202(b), RM-7128
Table of Allotments,
FM Broadcast Stations.
(Sulphur, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 1990; Released: March 6, 1990

By the Chief, Allocations Branch:

1. KSIG Broadcasting Co., Inc. (petitioner), licensee of Station KTQQ(FM), Channel 265A, Sulphur, Louisiana, has filed a petition for rule making requesting the substitution of Channel 265C3 for Channel 265A at Sulphur. Petitioner seeks to upgrade the current station's operations to provide Sulphur and the surrounding area with an expanded FM service.

2. We believe the proposal warrants consideration. Channel 265C3 can be allotted to Sulphur as a substitute for Channel 265A in compliance with the Commission's technical requirements with a site restriction of 14.5 kilometers (9 miles) east of the city.[1] Therefore, as requested, we shall propose to modify the license of Station KTQQ(FM) at Sulphur to specify operation on Channel 265C3 in lieu of Channel 265A. In accordance with Section 1.420(g) of the Commission's Rules we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Sulphur.

3. In view of the fact that Sulphur, Louisiana, could receive its first wide coverage area FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Sulphur, Louisiana	265A	265C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lou Basso, Jr.
President
KSIG Broadcasting Co., Inc.
Box 2418
Sulphur, LA 70664-2418
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Petitioner specified its desire to utilize the restricted site at coordinates 30-11-08 and 93-14-14.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 90-100

In the Matter of

Amendment of the Amateur Service Rules to Relocate the Novice and Technician Operator Class Frequency Segment within the Amateur Service 80 Meter Band. RM-6594

NOTICE OF PROPOSED RULE MAKING

Adopted: February 26, 1990; Released: March 7, 1990

By the Commission:

I. INTRODUCTION

1. This *Notice of Proposed Rule Making* (*Notice*) proposes to amend the Amateur Service Rules, 47 C.F.R. Part 97, to relocate Novice and Technician Operator Class control operator privileges in the 80 meter amateur service band. This proceeding was initiated by a petition for rule making (RM-6594) filed by Bradley Wells on November 17, 1988.

II. BACKGROUND

2. Section 97.301(e) of the Commission's Rules, 47 C.F.R. § 97.301(e), allows an amateur station having a control operator holding a Novice or Technician Operator Class license to transmit on the frequency segment 3700-3750 kHz of the 80 meter amateur service band (Novice segment).[1] Such stations, however, may transmit only telegraphy in that segment.[2] Beginning amateur operators in the United States use it primarily to polish their telegraphy skills. In Canada, however, this frequency segment is used by amateur stations for telephony.

3. The petitioner alleges that there is considerable interference between United States and Canadian amateur service stations operating in part of the frequency segment 3700-3750 kHz. He argues that the interference is exacerbated by the fact that the United States stations transmit telegraphy while the Canadian stations transmit telephony. According to the petitioner, the interference inhibits Novice and Technician Operator Class licensees in their efforts to develop proficiency in telegraphy. He requests that the 80 meter Novice segment be relocated to 3675-3725 kHz, which he contends is lightly occupied and not subject to telephony operations by Canadian amateur stations. No comments were filed in response to the petition.

III. PROPOSAL

4. It appears that there currently is interference in the 80 meter Novice segment. We believe that the suggested relocation of this segment from 3700-3750 kHz to 3675-3725 kHz would reduce such interference. We propose, therefore, to authorize the frequency segment 3675-3725 kHz in lieu of the current frequency segment 3700-3750 kHz for use by amateur service stations having control operators holding a Novice or Technician Class Operator license. [3] We invite comments from the amateur community concerning this proposal, especially with respect to the level of interference experienced in the current segment. We also invite comments with respect to whether relocation to the proposed segment, if authorized, would result in any interference to other amateur service operations.

IV. PROCEDURAL MATTERS

5. In accordance with Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. *See* 47 C.F.R. § 97.3(a)(4). Further, the reallocation of the 80 meter Novice segment would not have any signficant economic effect upon the manufacturers or distributors of amateur station equipment.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

7. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. §1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* 47 C.F.R. § 1.1203.

8. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted two copies of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that

presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, contain the docket number of the proceeding to which it relates, and be labeled or captioned as an *ex parte* presentation. *See* 47 C.F.R. § 1.1206.

9. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(c) and (r). Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, interested persons may file comments on or before **June 15, 1990,** and reply comments on or before **July 13, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided further that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419, formal participants must file an original and four copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and nine copies. Members of the general public who wish to express their interest by participating informally may do so by submitting an original and one copy of their comments. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room (Room 239) at its headquarters in Washington, D.C.

11. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended, 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.301(e) is amended by revising the line entry for the 80 meter band in the table to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(e) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements See § 97.303, Paragraph:
HF	MHz	MHz	MHz	
80 m	3.675-3.725	3.675-3.725	3.675-3.725	(a)

* * * * *

FOOTNOTES

[1] The full 80 meter amateur service band is 3500-3750 kHz. The other classes of amateur operator license are authorized more extensive privileges on the 80 meter band and include those of the Novice and Technician operator classes. The propagation characteristics of the 80 meter band facilitate communications over paths of several hundred miles. During the hours of darkness, longer paths are possible enabling amateur stations to make worldwide contacts.

[2] *See* Section 97.307(f)((9), 47 C.F.R. § 97.307(f)(9).

[3] The Commission's action of February 8, 1990, proposing a codeless class operator license for the amateur service will have no effect on the instant proposal. *See Notice of Proposed Rule Making,* 5 FCC Rcd _____ (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 89-65

In the Matter of

Amendment of the Amateur Service Rules Concerning Frequencies Authorized for Automatically Controlled Stations in Beacon Operation. RM-6512

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 26, 1990; Released: March 7, 1990

By the Commission:

I. INTRODUCTION

1. This *Report and Order* amends the Amateur Service Rules (47 C.F.R. Part 97) by changing the frequency segments that can be used by automatically controlled beacon stations (beacons) operating in the 2 meter (m) and 70 centimeter (cm) bands. This relocation should improve beacon station reception and make the information obtained from beacons more useful in conducting propagation experiments.

II. BACKGROUND

2. On March 6, 1989, we adopted a *Notice of Proposed Rule Making (Notice)* [1] in the above-captioned proceeding. The *Notice* proposed to change the segments in the 2 m and 70 cm bands where a beacon may transmit while under automatic control. Because it continuously transmits a one-way signal, this type of beacon is limited to low-power and to narrow segments of certain amateur service bands so that there will be minimal disruption from and to other types of amateur station operations. For example, reception of a beacon station in the currently authorized segments can be disrupted by high power transmissions from amateur stations engaging in moonbounce and other experimental communications. For this reason, the *Notice* proposed to change the segment where beacons can operate in the 2 m band from 144.05-144.06 MHz to 144.275-144.300 MHz, and in the 70 cm band from 432.07-432.08 MHz to 432.300-432.400 MHz. The impetus for the proposal was a petition for rule making (RM-6512) filed by The American Radio Relay League, Inc. (ARRL). The ARRL also requested that we change the segment where beacons can operate in the 1.25 m band from 220.05-220.06 MHz to 220.275-220.300 MHz. We declined, however, to propose such a change because the 220-222 MHz band was reallocated to the land mobile service.[2]

3. Four comments were received in this proceeding. [3] The commenters agree that relocating the beacon segments in the 2 m and 70 cm bands would markedly improve a beacon's compatibility with other types of amateur service operations.[4] Larry Lambert, however, suggests that the relocation segment in the 2 m band be 144.300-144.325 MHz,[5] while Thomas J. Kirby recommends 144.300-144.320 MHz.[6] The ARRL reiterates its request that the beacon segment in the portion of the 1.25 m band that was reallocated for land mobile use also be changed. It states that such a change now would have no effect on the ultimate determination concerning 220-222 MHz.[7]

III. DISCUSSION

4. We have carefully considered the comments filed. With respect to the suggestions to relocate the 2 m beacon segment to 144.300-144.320 MHz or 144.325 MHz as suggested by Messrs. Kirby and Lambert, respectively, we decline to do so. These commenters believe that the alternative segments would be better because there would be less interference from 2 m telegraphy operations. Even assuming some improvement in the environment for beacons, we are not persuaded that it is of such significance that there should be any deviation from the 2 m segment proposed. In any case, both commenters support the proposed relocation of beacon operations, even if their suggestions are not adopted. Accordingly, we are adopting a rule to relocate amateur service beacon operations in segments of the 2 m and 70 cm band, as proposed.[8]

5. With respect to ARRL's suggestion to relocate the beacon segment in the 1.25 m band, we believe that such relocation would serve no useful purpose in light of the fact that all types of amateur station transmissions in the 220-222 MHz segment will be deleted when the land mobile service implementation is completed.[9] There is, furthermore, another beacon segment in the 1.25 m band that is not affected by the rule amendment adopted in this proceeding.

IV. PAPERWORK REDUCTION ACT

6. The rule adopted herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that effective **May 18, 1990,** Part 97 of the Commission's Rules, 47 C.F.R. Part 97, IS AMENDED as set forth below. Authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

8. IT IS FURTHER ORDERED that a copy of this *Report and Order* be sent to the Chief Counsel for Advocacy of the Small Business Administration.

9. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.203(d) is revised to read as follows:

§ 97.203 Beacon station.

* * * * *

(d) A beacon may be automatically controlled while it is transmitting on the 28.20-28.30 MHz, 50.06-50.08 MHz, 144.275-144.300 MHz, 220.05-220.06 MHz, 222.05-222.06 MHz or 432.300-432.400 MHz segments, or on the 33 cm and shorter wavelength bands.

* * * * *

FOOTNOTES

[1] 4 FCC Rcd 2332 (1989).

[2] Amateur stations may continue to transmit in the 220-222 MHz segment until such time as private land mobile and government users are allowed access. *See Report and Order*, 3 FCC Rcd 5287 (1988). *See also* 4 FCC Rcd 6407 (1989) affirming the action taken in the *Report and Order*. A second beacon segment in the 1.25 m band, 222.05-222.06 MHz, continues to be allocated to the amateur service. It is not affected by the rule changes adopted in this proceeding.

[3] Comments were filed by Thomas J. Kirby, Larry Lambert, Robert A. Scupp, and ARRL.

[4] *See*, particularly, comments of Thomas J. Kirby at 1.

[5] Comments of Larry Lambert at 1.

[6] Comments of Thomas J. Kirby at 2 and 6.

[7] Comments of ARRL at 3.

[8] The Commission's action of February 8, 1990, proposing a codeless class operator license for the amateur service will have no effect on the instant rule amendment. *See Notice of Rule Making*, 5 FCC Rcd (1990).

[9] *See supra*, note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-72

In re Applications of

BENNY L. BEE, JR. (hereafter "Bee")	File No. BPH-880114ME
ASK BROADCASTING CORPORATION Debtor-in-Possession (hereafter "ASK")	File No. BPH-880114MN
Rochelle Lucas d/b/a HOMETOWN BROADCASTER OF BAKERSFIELD (hereafter "HBB")	File No. BPH-880114MQ
MCGAVREN-BARRO BROADCASTING CORPORATION (hereafter "Barro")	File No. BPH-880114NB
KERN COUNTY BROADCAST LIMITED PARTNERSHIP (hereafter "Kern")	File No. BPH-880114NE
ELGEE BROADCASTING (hereafter "Elgee")	File No. BPH-880114NG
TONGILA COMMUNICATIONS, INC. (hereafter "TonGila")	File No. BPH-880114NO

For Construction Permit for a New
FM Station on Channel 257A
in Bakersfield, California

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: March 7, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Bee.* Section III of FCC Form 301 asks each applicant to certify whether or not it has sufficient net liquid assets on hand or available from committed sources to construct and operate the requested facility for three months without revenue. When Bee filed his application on January 14, 1988, he answered "no" to that question, adding the statement: "The applicant will file an amendment concerning his financial qualifications." However, no such amendment was ever filed. Accordingly, a financial issue will be specified.

3. *Kern.* Information before the Commission indicates that Kern was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Oliver Springs, Tennessee	88-201
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party in interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Kern's qualifications to be a Commission licensee. Therefore, such issues will be specified and tried against Kern in this proceeding.

4. Item 5(e) of Section II, FCC Form 301 (October 1986) requires applicants to indicate if the applicant or any party to it has or has had an interest in "a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the application." If answered in the affirmative, the applicant is to provide the name of the party having an interest, the nature of the interest or connection and dates, the call letters or file number of the application or docket number, and the location. Although Kern indicated, for example, that limited partner Sandra A. White was a limited partner in Belle Chasse Radio Limited Partnership (File No. BPH-870527ME), it failed to timely amend its application pursuant to 47 C.F.R. § 1.65 to notify the Commission that Belle Chasse Radio Limited Partnership's application was dismissed with prejudice.

Mary Faye Gilbert, FCC 89M-1285 (released April 27, 1989). Accordingly, an appropriate issue will be specified below.

5. *Elgee*. On March 18, 1988, Elgee filed an amendment to change its transmitter site and increase its antenna height above average terrain ("HAAT") from 44 to 101 meters. However, this amendment is a "suicide" amendment since its acceptance would result in the dismissal of Elgee's application from the instant proceeding for exceeding the 100-meter maximum HAAT permitted for this Class A allocation pursuant to 47 C.F.R. § 73.211. Commission precedent provides for the nonacceptance and predesignation return of amendments which would cause the dismissal of mutually exclusive applications. *See Golden Shores Broadcasting, Inc.*, 2 FCC Rcd 4743 (1987). *See also Tequestra Television, Inc.*, 2 FCC Rcd 41 (1987), *modifying* 103 FCC 2d 1182 (Rev. Bd. 1986). Consequently, Elgee's amendment will be returned and all engineering considerations will be based on the applicant's tendered proposal.

6. *Antenna Height Discrepancies*. Elgee and TonGila propose to mount their transmitting antennas on existing towers in Bakersfield: Elgee on KERN-AM's tower on Highway 58, and Culbreath on KBKE-FM's tower 1.8 miles North of Manor Street. Although both towers have previously cleared both FCC and FAA study, the applicants' proposed antenna heights differ from those on our Antenna Survey Branch records. Where Elgee states that the existing tower is 55 meters above ground level (AGL) and 340 meters above mean sea level (AMSL), our records list these heights as 120.7 meters and 405.4 meters. Similarly, TonGila states that the existing tower is 93 meters AGL and 210 meters AMSL. Our records list these heights, respectively, as 91.7 and 208.5 meters. Since both applicants propose to locate on towers licensed to an existing Commission licensee, and because specific reference is made to these towers in the applications in question, the staff could confidently and reliably verify the pertinent tower heights by taking official notice of the tower parameters found in the Commission's records. Therefore, the applications are acceptable for filing. However, both Elgee and TonGila will be required to submit amendments clarifying these discrepancies to the presiding Administrative Law Judge.

7. *City Coverage*. The engineering data submitted by five of the seven applicants in this proceeding demonstrates that they will not provide a 3.16 mV/m signal to the entire proposed city of license, as required by Section 73.315(a) of the Commission's Rules. The five are Bee, ASK, HBB, Kern and Elgee. All have requested a waiver of Section 73.315(a) of the Commission's Rules on the grounds that the peculiarly elongated configuration of Bakersfield makes it virtually impossible for a Class A FM station to achieve full coverage of the city. We agree, and find that the applicants have submitted facts and circumstances which persuade us that grant of a waiver of Section 73.315(a) would be in the public interest.

8. *Areas and Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. *Air Hazard*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by ASK and Kern would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Bee is financially qualified to be a Commission licensee.

2. To determine whether Bee misrepresented the facts to the Commission on January 14, 1988, when he represented that he would "... file an amendment concerning his financial qualifications," and, if so, what effect that has on Bee's qualifications to be a Commission licensee.

3. To determine whether Sonrise Management Services, Inc. is an undisclosed party to Kern's application.

4. To determine whether Kern's organizational structure is a sham.

5. To determine whether Kern violated Section 1.65 of the Commission's Rules and/or lacked candor by failing to report: (i) the designation of character issues against other applicants in which several of its owners have an ownership interest, and (ii) the dismissal of such applications with unresolved character issues pending.

6. To determine, from the evidence adduced pursuant to Issues 2 through 4, above, whether Kern possesses the basic qualifications to be a licensee of the facilities sought herein.

7. To determine whether there is a reasonable possibility that the tower height and location proposed by ASK and Kern would constitute a hazard to air navigation.

8. To determine which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That Elgee's March 18, 1988 amendment IS RETURNED.

12. IT IS FURTHER ORDERED, That Elgee and TonGila must file amendments clarifying discrepancies concerning their tower heights, as detailed in paragraph 6 hereinabove, with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That, as to Bee, ASK, HBB, Kern and Elgee, the provisions of Section 73.315(a) ARE WAIVED to permit a signal level of less than 3.16 mV/m over the entire city of license.

14. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Revisions to Tariff F.C.C. No. 12

Transmittal Nos. 1948, 2033, and 2102

Custom-Designed Integrated Services

ORDER

Adopted: February 16, 1990; Released: February 16, 1990

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) Transmittal No. 1948, filed on December 5, 1989 and scheduled to become effective February 18, 1990, would establish an integrated service package (ISP), Virtual Telecommunications Network Service (VTNS) Option 24, to be provided under AT&T Tariff F.C.C. No. 12. Petitions to reject or suspend this offering were filed December 18, 1989 by Williams Telecommunications Group, Inc. (Williams), and December 20, 1989 by US Sprint Communications Company Limited Partnership (Sprint) and the State of Hawaii (Hawaii). AT&T replied to these petitions December 29, 1989 and also filed further revisions January 12, 1990 under Transmittal No. 2033. Hawaii petitioned to reject or suspend those revisions January 18, 1990 and AT&T replied January 25, 1990. Hawaii then responded by letter of January 31, 1990 to AT&T's reply. Finally, AT&T on February 14, 1990 filed additional revisions under Transmittal No. 2102, to become effective February 18, 1990.[1]

2. Transmittal 1948 establishes VTNS Option 24, a configuration of Measured Ports, Rate Option 2 Measured Remote Ports, Port Access Telephone Numbers, Authorization Codes and Voice and Data Transmission Capabilities (VTCs and DTCs). This option provides service to the United States, Puerto Rico, the U.S. Virgin Islands, and specified international locations. The minimum annual charges for the five-year term gradually escalate from $27 million for the first year to $56 million for the final year, with annual increments ranging from $5 to $9 million.

3. The two rate schedules originally filed under Transmittal 1948 for measured charges applied to specific call configurations, and each established staged volume discounts. Neither schedule reflected time-of-day (TOD) sensitivity, and distance sensitivity under both schedules was limited to a rate surcharge explicitly applicable to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. The subsequent revisions under Transmittal 2033 removed the geographic basis for the surcharge and instead established three mileage bands – two above, and one below, a 3000-mile breakpoint. The most recent revisions under Transmittal 2102 remove all geographic rate distinctions and distance sensitivity from the arrangement, postalizing rates for Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands on the same basis applied to mainland points.

4. Hawaii contends in its petition to reject or suspend Transmittal 1948 that the rates applied under VTNS Option 24 discriminate against the state and other geographic areas, contradict the Commission's rate integration policy, and are not justified by meaningful cost support warranting surcharges. Hawaii 1948 Petition at 2-4.

5. Sprint argues that Option 24 proposes a different rate structure than previous Tariff 12 arrangements, because it employs domestic measured charges that are neither distance nor time-of-day sensitive, and separates access charges for switched usage from the measured charges in Rate Schedules A and B. Sprint 1948 Petition at 1-2. Sprint also asserts that the VTNS Option 24 customer does not obtain an integrated service package that is "like" other VTNS options, in the sense that term is used by Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), because the "turnkey" aspect of VTNS arrangements is not satisfied by a configuration that does not include dedicated access. *Id.* at 2-3. Sprint also states that the message service provided under Option 24 is no different than service provided under other currently effective AT&T tariffs. *Id.* at 3-4. Sprint avers that even if "unlike" AT&T component offerings, VTNS Option 24 discriminates unreasonably against other VTNS customers, because its rate structure and levels vary significantly from the other VTNS options. Finally, Sprint contends that the terms and conditions specific to Option 24 effectively restrict it to the customer for which it was designed. *Id.* at 4-5.

6. Williams asserts that the specific provisions contained in these options make them practically available to only one customer, conflicting with the *April 18 Order* [2] and other Commission decisions, and fail to satisfy Commission cost support requirements or the private line rate structure guidelines. Williams Petition at 6-13. Williams adds that there are significant disparities between the projected results and rate structures for the various Tariff 12 options. *Id. at 16-20.*

7. Hawaii contends that the altered rate structure in Transmittal 2033 "sets forth an entirely new interpretation of rate integration" not reviewed by the Commission. Hawaii 2033 Petition at 4-8. Hawaii also asserts the revised structure would subject mainland locations other than the west coast to a 35 to 50 percent rate surcharge, compared to the postalized mainland rates. *Id.* Although AT&T challenged Hawaii's contentions concerning Transmittal 2033, Transmittal 2102 subsequently revised the rate structure to remove geographic distinctions and distance sensitivity. *See* para. 3, *supra.*

8. The Common Carrier Bureau has reviewed AT&T's Transmittal Nos. 1948, 2033, and 2102, the petitioners' assertions, and related pleadings. In light of the most recent revisions filed by AT&T, we conclude that no compelling argument has been presented that the tariffs are so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

9. Accordingly, IT IS ORDERED that the petitions to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 1948, filed by the State of Hawaii, US Sprint Communications Company Limited Partnership, and Williams Telecommunications Group, Inc., ARE DENIED.

10. IT IS FURTHER ORDERED that the petition to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2033, filed by the State of Hawaii, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T's Application No. 693, for special permission to file these revisions on less than the statutory notice specified by Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, was filed and approved February 14, 1990, and Transmittal 2102 subsequently filed under authority of Special Permission No. 90-163.

[2] AT&T Communications, Revisions to Tariff F.C.C. No. 12, CC Docket No. 87-568, Memorandum Opinion and Order. 4 FCC Rcd 4932 (1989) (*April 18 Order*), *recon. denied*, 4 FCC Rcd 7928 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-522

In re Applications of

V.O.B. INCORPORATED	File No. BPH-871102MH
RICHARD and STEPHANIE HERMANN d/b/a DICK BROADCASTING, LTD.	File No. BPH-871104MD
WILLIAM B. ROTH	File No. BPH-871104MG

For Construction Permit for a
New FM Station on Channel 292A
Ankeny, Iowa

Appearances

James J. Freeman and *Gregory W. Whiteaker* on behalf of V.O.B. Incorporated; *John H. Midlen, Jr.* and *Gregory H. Guillot* on behalf of Richard and Stephanie Hermann d/b/a Dick Broadcasting, Ltd.; and *Jonathan W. Emord* on behalf of William B. Roth.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: February 28, 1990; Released: March 7, 1990

PRELIMINARY STATEMENT

1. By *Hearing Designation Order* ("HDO"), DA 88-1712 (released November 21, 1988), the Commission designated for hearing four mutually exclusive applications for a new commercial FM broadcast station on Channel 292A (106.3MHz) in Ankeny, Iowa. The application of Iowa Radio Limited Partnership has been dismissed by *Order*, FCC 89M-1735 (released June 27, 1989), leaving the following three applicants: V.O.B. Incorporated ("V.O.B."); William B. Roth ("Roth"); and Richard and Stephanie Hermann d/b/a Dick Broadcasting, Ltd. ("DBL").

2. The issues designated by the Commission pertaining to these applications are as follows:

> To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

3. A prehearing conference in this proceeding was held on January 27, 1989. Hearing sessions were held on June 27-28, 1989, and the record was closed on June 28, 1989. *Order*, FCC 89M-1766 (released July 3, 1989).

Findings of Fact - Standard Comparative Issues

V.O.B. Incorporated

4. V.O.B. is a corporation organized under the laws of the State of Iowa which has both voting (Class A) and nonvoting (Class B) stock (V.O.B. Ex. 1, p. 1; Tr. 64). The ownership of V.O.B. is as follows:

Shareholder	Shares Subscribed	Shares Issued	Percent Equity Ownership of Subscribed and Issued Shares
Steven D. Van Oort	30,000 Class A	7,500 Class A	18.78 percent
Darlene A. Van Oort	30,000 Class A	7,500 Class A	18.75 percent
Dwayne D. Van Oort	68,000 Class B	17,000 Class B	42.50 percent
Terry D. Van Oort	32,000 Class B	8,000 Class B	20.00 percent

(V.O.B. Ex. 1, p. 1; V.O.B. Ex. 3, p. 1; V.O.B. Ex. 4, p. 1). All of the shareholders of V.O.B. are U.S. Citizens (V.O.B. Ex. 1, p. 1). The allocation of shares was based on the amount of money which each shareholder could contribute to the cost of the preparation and prosecution of the application (Tr. 53-54). Upon call of the Company, Steven and Darlene Van Oort intend to purchase all of the shares to which they have subscribed so that they will continue to maintain their equity percentage in V.O.B. (V.O.B. Ex. 3, pp. 1-2; Ex. 4, p. 1).

5. Steven D. Van Oort is the President and Treasurer of V.O.B., and Darlene A. Van Oort is the Vice President and Secretary (V.O.B. Ex. 1, p. 1; Ex. 3, p. 1; Ex. 4, p. 1). Steven and Darlene Van Oort are the sole directors (V.O.B. Ex. 1, p. 1).

6. The Class B nonvoting shareholders of V.O.B. are Dwayne D. Van Oort and Terry D. Van Oort. Dwayne D. Van Oort, the father of Steven Van Oort, is a semi-retired businessman who resides in Ankeny and is a consultant to Northwest Erection Services, a construction company he founded (*Id.*). Terry D. Van Oort, the brother of Steven D. Van Oort, is a medical doctor in Ankeny (*Id.*).

7. The nonvoting shareholders have no right to vote (V.O.B. Ex. 1, p. 2, V.O.B. Ex. 2 art. IV). There are no agreements nor have there been any discussions under which the voting shareholder would swap shares with or appoint to the Board of Directors a nonvoting shareholder (Tr. 70, 86, 94). The nonvoting shareholders will not be materially involved in the management of day-to-day operations of the proposed station (V.O.B. Ex. 1, p. 2). Although there is no specific plan at the present, the voting shareholders may consult with Dwayne D. Van Oort on the construction of the proposed station because of his experience as a local contractor (V.O.B. Ex. 1, p. 2; Tr. 35-37). This consultation would not involve any aspects of day-to-day operations of the station but only the physical construction of the station (V.O.B. Ex. 1, p. 2; Tr. 36). Dwayne Van Oort would not be paid for this

limited consultation (Tr. 36-37). Other than the possibility of this limited consultation, no nonvoting shareholder will provide services to or be employed by the station or serve as an independent contractor or agent for the station (V.O.B. Ex. 1, p. 2). No nonvoting shareholder will receive any payment or other compensation as the result of a grant of V.O.B.'s application (*Id.*).

8. Steven Van Oort's mother initially learned of the availability of the frequency from the newspaper and called it to Dwayne's attention (Tr. 42). Dwayne then told Steven about it and they discussed filing for the frequency (Tr. 42). Steven Van Oort initially contacted and retained V.O.B.'s communications counsel (Tr. 51). His father recommended a local lawyer whom Steven subsequently spoke with and retained to handle the corporate work for V.O.B. (Tr. 52). Both V.O.B.'s communications counsel and its corporate counsel gave Steven advice on the structure of the applicant (Tr. 52-53). Upon receiving a map from the engineer showing the area in which the site could be located, Steven Van Oort requested his father to look in the area where the station formerly operating on Channel 292A had its tower to see if there was any land available for another antenna site (Tr. 62, 93-94). Dwayne Van Oort initially contacted the realtor but then Steven contacted the realtor to work out the terms for the use of the site (Tr. 94). Terry Van Oort and Dwayne Van Oort introduced Steven to a local Ankeny bank where Steven arranged for financing for the cost of construction and operation (Tr. 90). Steven was responsible for filling out Form 301 (Tr. 58).

9. Mr. Steven Van Oort will work full-time (not fewer than 40 hours per week) as General Manager of the proposed station (V.O.B. Ex. 3, p. 2). He will exercise administrative oversight of all aspects of the station's operations, including implementation of station policies, approval of programming and supervision of personnel (*Id.*). He will be responsible for assembling the management team for the station; however, department heads will be responsible for hiring their subordinates subject to his approval where appropriate (*Id.*). All department heads will report directly to Mr. Van Oort (*Id.*). He also will be primarily responsible for implementing the station's EEO program and for establishing and coordinating strategic planning and budgeting in conjunction with the Business Manager (*Id.*). In addition to the foregoing duties at the station, he will spend time working with the community to be sure that the station is meeting the community's needs (*Id.* pp. 2-3).

10. Currently, Mr. Van Oort is doing free-lance voice work for radio, television, and the local cable system as well as consulting radio stations on programming and computers (V.O.B. Ex. 3, p. 4). In the event V.O.B.'s application is granted, he will terminate these activities and have no other employment while serving as General Manager of the proposed station (*Id.*).

11. Darlene Van Oort proposes to work full-time (not fewer than 40 hours a week) as the Assistant General Manager and the Business and Public Affairs Manager of the proposed station (V.O.B. Ex. 4, p. 2). In her primary role as Business Manager she will be responsible for the supervision of personnel handling bookkeeping and accounting functions such as billing and collections (*Id.*). She will be responsible for supervising the relations of the station with its bank and lenders and for cash flow management (*Id.*). As Public Affairs Manager, she will represent the station in the community in an effort to develop information on local needs and interests to be addressed by the station (*Id.*). She will be in charge of establishing procedures for and supervision of public service announcements and will be in charge of the station's public affairs programming for all community projects (*Id.*). In her capacity as Assistant General Manager, she will be in charge of special projects as designated by the General Manager and will act as the General Manager when Mr. Van Oort is unavailable (*Id.*).

12. Steven and Darlene Van Oort are husband and wife (V.O.B. Ex. 1, p. 1). Steven Van Oort moved with his parents to Ankeny in 1967, and attended Ankeny High School from 1967-68 (V.O.B. Ex. 3, p. 1; Tr. 31). Mr. Van Oort worked in Ankeny during the summers, spent Christmas vacations there, and visited his family there throughout his college years (V.O.B. Ex. 3, p. 1; Tr. 32-33).

13. Darlene Van Oort has lived in Grosse Pointe Farms, Michigan almost all her life (V.O.B. Ex. 4, p. 1). From 1965 to 1978 Ms. Van Oort worked for G-M Underwriters Incorporated and held various positions, including Accident Insurance Claims Reviewer, Claims Adjuster, Supervisor of the Claims Department and Business Office Manager (*Id.*).

14. In the event of a grant of V.O.B.'s application Steven and Darlene Van Oort intend to move to Ankeny and reside within the city limits (V.O.B. Ex. 3, p. 3; V.O.B. Ex. 4, p. 3).

15. Steven Van Oort was Station Manager of WWJ/WJOI Radio, Southfield (Detroit), Michigan from November, 1986, to January, 1989 (V.O.B. Ex. 3, p. 3). As Station Manager, he was responsible for station operations, including business procedures, programming, sales support, engineering and advertising/marketing (*Id.*). In January 1989, he resigned from WWJ/WJOI (*Id.*). From June, 1982 to November, 1986, he served as Operations/Program Director of WWJ/WJOI (*Id.*). Mr. Van Oort also served as Operations/Program Director of WJR-FM Radio, Detroit, Michigan from September, 1976 to June 1982 (*Id.* p. 3-4). In this capacity he was responsible for all internal aspects of WJR-FM (*Id.* p. 14). From 1974 to 1976, he was Program Director of WMUZ-FM, Detroit, Michigan where he supervised the production staff (*Id.*). While working at WMUZ, Mr. Van Oort also worked weekends at WOMC-FM, Detroit, Michigan, as a Disc Jockey and Production Assistant (*Id.*). From 1972 to 1973 he was Staff Announcer at WBFG-FM, Detroit, Michigan (*Id.*).

16. From November 1978 to November 1981, Darlene Van Oort was Administrative Assistant to the Program Director, Chief Engineer and Public Affairs Director of WJR-AM, Detroit, Michigan (V.O.B. Ex. 4, p. 3; Tr. 55). In this capacity, she was responsible for special scheduling of on-air talent, drafting and distributing promotion/news releases, and, selection of public service announcements (*Id.*). She was also a liaison with listeners (*Id.*).

17. Neither V.O.B. nor its voting or nonvoting shareholders have any ownership interest in any medium of mass communications other than in connection with the instant application (V.O.B. Ex. 1, p. 2). Steven Van Oort resigned from his position with station WWJ/WJOI in January 1989 and will terminate his current free lance and consulting radio, television and cable work before the proposed station commences operations (V.O.B. Ex. 3, pp. 3-4).

18. V.O.B. will have a complete auxiliary power system so that its transmission facility and studio can continue to function in case of an emergency (V.O.B. Ex. p. 3).

Dick Broadcasting, Ltd.

19. At the time of filing of the application and at the time of hearing, Dick Broadcasting, Ltd. was a general partnership organized under the laws of the State of Iowa (DBL Ex. 1, p. 1). DBL had the following partners, who held the positions and partnership interests set forth below:

Richard D. Hermann, Esq.	General Partner 51 percent ownership interest
Stephanie L. Hermann	General Partner 49 percent ownership interest

20. DBL's Articles of Co-Partnership, executed on October 21, 1989, provided that ". . . all planning and management decision making shall be mutually agreed upon between the partners . . . however, if a dispute arises Richard Hermann shall have the final authority" (DBL Ex. 2, pg. 2). Ms. Hermann testified that this provision, as well as DBL's ownership structure was chosen to avoid problems if the couple disagreed ". . . so that a decision that was made could go through and very speedily, if necessary" (Tr. 128). DBL intended to operate as an equal partnership as between the two partners (Tr. 258) with Mr. Hermann legally vested with 51 percent control for purposes of breaking any deadlock between them should they disagree (Tr. 242, 248).

21. By Amendment ("Amendment") filed October 23, 1989 and accepted by *Memorandum Opinion and Order*, FCC 90M-16, released January 5, 1990, DBL reported that its 51% general partner Richard D. Hermann, Esq. died on September 21, 1989 (Amendment at para. 1).

22. Pursuant to article 17 of DBL's Articles of Co-Partnership, Stephanie L. Hermann, DBL's former 49% general partner, has inherited Richard D. Hermann's partnership interest in DBL and is now DBL's sole owner with a 100% ownership interest (Amendment at para. 4).

23. Stephanie L. Hermann will serve as the full-time general manager of DBL's proposed station, devoting a minimum of 40 hours per week to her duties. In this position, Ms. Hermann will be responsible for overall station management, including budgeting, staffing and supervision of all programming, news, sales, office and engineering aspects of station operations, including the building and construction of the station (Amendment at para. 5). Ms. Hermann also will be responsible for administering and implementing DBL's Equal Employment Opportunity Program. (Amendment at para. 3).

24. Stephanie L. Hermann has been appointed to replace Mr. Hermann in the various positions held by him in committees of the Ankeny Chamber of Commerce, and has been proposed to fill Mr. Hermann's position with the Ankeny Industrial Development Board, as listed in DBL's Written Direct Case Exhibit 5 (Amendment at para. 6).

25. As will be seen below, it is Commission policy that post designation amendments may not upgrade an applicant's comparative status. To determine what integration and enhancement credit inure to an applicant where a deceased principal has been substituted, it is necessary to examine what credits the applicant was entitled to prior to the decease of said principal. The following findings regarding DBL are made for this purpose.

26. Mr. Hermann initially learned of the availability of the frequency (Tr. 120). Mr. Hermann decided to apply as a partnership and drafted the partnership agreement (Tr. 123, 128). He sought recommendations on and then retained counsel (Tr. 121-122), retained an engineer (Tr. 123-124) and arranged the use of the site (Tr. 216). Richard Hermann was responsible for filling out FCC Form 301 (Tr. 214). Ms. Hermann provided no information for the application (Tr. 127). Mr. Hermann was responsible for gathering the information relied on by DBL for its financing (Tr. 216). No one, however, prepared estimates of construction costs (apart from site acquisition) or operating costs or even a staffing plan (Tr. 234-235). Mr. Hermann certified the site availability and financial qualifications and signed the application. He, Hermann, spoke with three lending institutions and a friend about acquiring a loan for the cost of construction (Tr. 236-257). Ms. Hermann could identify only two activities in which she had participated in the preparation and prosecution of the application (Tr. 141). In one telephone call to a bank Ms. Hermann inquired into the availability of a loan (Tr. 132-135), and she gathered the documents for production which her husband and counsel told her to gather (Tr. 137-139). Ms. Hermann had not discussed the format of the station and does not know to what audience the station will appeal (Tr. 141-142). The initial partnership contributions for both Richard and Stephanie Herman and all expenses of the applicant have been paid out of Richard Hermann's Law Office account, an account in his name, with funds earned from his law practice (Tr. 130, 168, 240).

27. Richard D. Hermann was proposed to serve as the full-time general manager of DBL's proposed station, devoting a minimum of 40 hours per week to his duties and responsibilities as general manager. (DBL Ex. 4, pg. 1; Tr. 229), and for more than the first two years 60 to 70 hours per week (Tr. 292). As general manager, Mr. Hermann was to be responsible for overall station management, including budgeting, staffing and the supervision of all programming, news, sales, office and engineering aspects of station operations (DBL Ex. 4, pg. 1). He was to be directly responsible for development and implementation of station policies and would select and establish the format to be used for the station (*Id.*). He also was to be responsible for promotional work in the community, and, initially, would assist in sales (*Id.*). Further, Mr. Hermann was to be in charge of the building and construction of DBL's proposed station, and oversee implementation of the station's Equal Employment Opportunity program (*Id.*).

28. Mr. Hermann, a lawyer, planned to continue his existing law practice while serving as General Manager of the proposed station (DBL Ex. 4, pg. 1). At the time of the hearing, he typically worked at his law practice from 8:30 or 9:00 a.m. to 4:30 or 5:30 p.m. (Tr. 155, 185) with an hour and one-half lunch which he usually took with his wife and one of the other secretaries (Tr. 246). He acknowledged that clients sometimes called him at home or after 4:30 p.m. (Tr. 204). Mr. Hermann worked on Saturdays "very sparingly" (Tr. 205). Mr. Hermann established his practice in 1965 and had continued it since then (DBL Ex. 5, pg. 2; Tr. 179). He estimated that his

law practice currently provides 85 percent of his and his wife's income (Tr. 200-201), and income from the law practice would be an important factor in making the radio station viable (Tr. 257). He spent a great deal of time actively promoting his practice through business, civic and social functions (Tr. 253-254). As part of his promotional activity, Mr. Hermann regularly "had coffee with the boys" in the morning before coming to work, and often had a drink after work or stopped by the Chamber of Commerce (Tr. 155-156). He also attended various civic meetings often in the morning, in an effort to promote his law practice (Tr. 205-206).

29. In his direct case testimony, Mr. Herman explained how he would have accommodated both his legal work and his station responsibilities. Mr. Hermann planned to arrange his schedule to practice law from 9:00 a.m. to 4:30 p.m. Monday through Friday, (DBL 4, pg. 2; Tr. 246) with an hour to an hour and one-half for lunch, (DBL Ex. 246-247) amounting to a total of 32.5 hours per week. Mr. Hermann had proposed to work at the station from 6:00 a.m. to 9:00 a.m. and 4:30 p.m. to 8:00 p.m. Monday to Friday and 9:00 a.m. to 6:00 p.m. Saturday (one hour lunch) amounting to 40.5 hours (DBL Ex. 4, pg. 2). Mr. Hermann thought he might also at times use lunch during the week to have sales meetings and to promote the station (Tr. 228, 246, 258). Mr. Hermann planned to bring a light dinner with him during the week and eat at the station (Tr. 205). He also testified, however, that "[N]obody is going to be restricted to these particular hours" (Tr. 249), and under questioning by the Presiding Officer, Hermann suggested that he "will be available for the radio station or the law practice at any time of day" (Tr. 255).

30. Normal business hours in Ankeny are 8:30 a.m. - 5:00 p.m. (Tr. 254). The station staff will keep regular hours, (Tr. 211) and probably only an announcer will be there in the evenings (Tr. 250) when Mr. Hermann would be at the station. Under questioning by the Presiding Officer as to how he would be available to the public under his proposed schedule, Mr. Hermann modified his sworn direct testimony stating that he would be available for either law or radio station business at any time during the day, since the station studio will be in the same building as his law office (Tr. 255).

31. In order to effectuate his integration proposal Mr. Hermann had hired two assistants who, it was suggested, would take over a portion of his law practice (DBL Ex. 4, pg. 2). These two assistants, however, were already working for Mr. Hermann (Tr. 191). One of the assistants, Barbara Clark, worked only two days a week, (Tr. 192) and as a mother and wife was not willing to work more than she currently had (Tr. 193). The other assistant, Jerry Roberson was employed by the State of Iowa as a Hearing Officer (Tr. 193). He sometimes did research for Mr. Hermann (Tr. 191-192). He worked from 0 to 20 hours in a week (Tr. 191), but no evidence has been offered to indicate that he is in a position to increase the time he now gives to Mr. Hermann or that he would be willing to do so. Moreover, Mr. Hermann acknowledged that it is not possible to delegate to assistants in the law business the way it is in the radio business because in a small town his clients "like to depend on the fact that they have got Dick Hermann as their lawyer" (Tr. 212).

32. Mr. Hermann claimed that he did not propose to work at least 40 hours a week in order to meet FCC requirements but rather to successfully run the station (Tr. 229, 231). He estimated that in fact he might be working 60 to 70 hours a week at the station when it first started (Tr. 229). In his experience the amount of time required by a business is greater at first and then falls off (Tr. 211). He anticipated pulling together an experienced staff and delegating increasing amount of work (Tr. 230, 248). The amount of time he would spend at the station would be determined primarily by the needs of the business (Tr. 212, 230, 244-250, 251-252), and at some point he anticipated decreasing the number of hours he worked (Tr. 229-230). He would not necessarily come in at 6:00 a.m. or stay to 8:00 p.m. if he was not needed (Tr. 249-250). Mr. Hermann testified, "[Y]ou don't necessarily need to be there cracking the whip, but you need to have the threat of being there to crack the whip and I think that's all management is" (Tr. 249). Mr. Hermann expected that there would always be the need for him to manage the station, but that this should be a simple thing to accomplish since the station was right next to his law office (Tr. 251-252).

33. In the past, Mr. Hermann had had other business interests in addition to his law practice. From 1976 to 1980 Mr. Hermann simultaneously ran three businesses, the law practice, a real estate brokerage, and a feeder pig business (DBL Ex. 5, pg. 2; Tr. 179-181). On cross-examination, Mr. Hermann estimated that he worked six to eight hours a day on the law practice, (Tr. 182) three to four hours on the real estate, (Tr. 184) and four to six hours a day (plus weekends) on the pigs (Tr. 182); however, in later cross-examination he indicated that he basically conducted the real estate and law businesses during the normal business day, 8:30 a.m. to 5:00 p.m., sometimes at the law office, sometimes at the real estate office (Tr. 183-184). He raised the pigs in the morning and evenings and on the weekends (Tr. 183). At the time, he worked at the law firm fewer hours than he currently did (Tr. 156).

34. At the hearing, Stephanie L. Hermann stated that she will work full-time *i.e.*, at least 40 hours per week, as program director and news director (DBL Ex. 4, pg. 1; Tr. 135). She will be in charge of on-air talent, selecting music, determining what sources of news will be used, and liaison with the service area, including determination of its needs and interests and how to serve them (DBL Ex. 4, pg. 1). Ms. Hermann also will act as assistant manager (*Id.*).

35. Currently, Ms. Hermann works full time as Mr. Hermann's "secretary/girl Friday," officer manager and paralegal (DBL Ex. 6, pg. 1; Tr. 111, 257). Ms. Hermann handles much of the "busy work" at the law office (Tr. 241). She proposes to withdraw from this position before the station goes on the air (DBL Ex. 4, pg. 2). Mr. Hermann envisioned that their working relationship at the station would be much the same as their relationship at the law office (Tr. 258). According to Mr. Hermann, "[S]he's going to be again, a girl Friday" (Tr. 257). In their relationship, Mr. Hermann was "the boss" and made the decisions (Tr. 128-129, 242-243). Ms. Hermann moved to the Ankeny area in 1978 and became a "secretary/girl Friday" in Mr. Hermann's law office (DBL Ex. 6, pg. 1).

36. Richard D. Hermann had been a resident of Polk County, Iowa, the county in which Ankeny is located, for his entire life (59 years), except for the brief period in which he resided in Houston, Texas, while working for Morrison International Equipment Company, and while serving in the armed forces (DBL Ex. 5, pg. 3). Mr.

Herman resided in an unincorporated area just adjacent and contiguous to the city of Ankeny, Iowa, and within the Ankeny mailing district (*Id.*). Mr. Hermann's law office address was 2301 West 1st Street, Ankeny, Iowa (*Id.*). He had practiced law within the city of Ankeny for approximately 24 years (*Id.*). He planned to remain in the Ankeny community for the rest of his life, whether or not DBL was to be awarded the construction permit for its proposed station, and maintain no residence other than his current Ankeny residence (*Id.*).

37. Mr. Hermann had demonstrated a commitment to civic activities in his place of residence. First, Mr. Hermann had served as legal counsel to the Ankeny Chamber of Commerce for 17 years, donating his services entirely (DBL Ex. 5, pg. 8). Additionally, from 1967 to 1973, Mr. Hermann served as a Police Court Judge in the City of Ankeny, having been appointed to this position by the Ankeny City Council (DBL Ex. 5, pg. 4). His duties in connection therewith included the handling of simple misdemeanor cases and the conduct of preliminary hearings in juvenile and felony matters (*Id.*). He devoted approximately four to five hours per week to these duties (*Id.*).

38. In 1974, Mr. Hermann ran an unsuccessful campaign for Iowa Attorney General, developing in greater depth his understanding of the needs of the Ankeny and surrounding communities (*Id.*).

39. From 1972 to 1974, Mr. Hermann was a member of the Polk County Zoning Board, a Board appointed by the Board of Supervisors to make recommendations regarding zoning matters and conduct hearings regarding same (*Id.*). Mr. Hermann was Chairman of the Board in 1972 (*Id.*).

40. In 1975, Mr. Hermann served as Vice-President of the Ankeny Centennial Corporation, an organization put together to celebrate Ankeny's 100th anniversary. As Vice-President, Mr. Hermann was responsible for the program, as well as an associated pageant and parade (*Id.*).

41. In 1976, Mr. Hermann was Chairman of the Bicentennial Committee, and was thus responsible for organizing Ankeny's involvement in the celebration of the United States' 200th anniversary (*Id.*).

42. Mr. Hermann had been a member of the Chamber of Commerce since 1965; as President, he delegated the organization's workload, conducted its meetings and established and supervised its committees (DBL Ex. 5, pg. 5). Mr. Hermann spent slightly less than one-half hour per week attending meetings of the Chamber of Commerce (Tr. 206). He had been a member of the organization's Past Presidents' Council since 1978 (DBL Ex. 5, pg. 5).

43. In 1978 and 1979, Mr. Hermann held the position of Commander of the American Legion (*Id.*). His duties included the conduct of meetings, preparation of correspondence and planning the business of the Legion (*Id.*). Mr. Hermann had been a member of the Legion since establishing his law practice in Ankeny in 1965 (*Id.*).

44. From 1980 to 1985, Mr. Hermann was an American Legion Trustee (*Id.*). In this position, he oversaw the rental of the American Legion building and assisted in the conduct of other business of the Legion (*Id.*).

45. From 1980 to 1985, Mr. Hermann also was a charter member and parade chairman of the Ankeny Celebration Committee, an organization formed to celebrate the unique opportunities available to the citizens of Ankeny (*Id.*). The Committee's main event each year is "Ankeny Fun and Feed Day," and Mr. Hermann had held various offices throughout the years in connection with the organization of this event, including parade chairman (*Id.*).

46. In 1981, Richard Hermann served as Chairman of the Ankeny Chamber of Commerce Accreditation Program (DBL Ex. 5, pg. 6). As Chairman, Mr. Hermann headed the Ankeny Chamber of Commerce's efforts to obtain accreditation from the National Chamber of Commerce, in order to make the Ankeny Chamber more efficient and better organized (*Id.*). Due largely to Mr. Hermann's efforts, Ankeny's Chamber now is accredited (*Id.*). That same year, Mr. Hermann was Co-Chairman of the Ankeny Chamber Car Raffle (*Id.*).

47. Since 1983, Mr. Hermann had been a member of the Ankeny Industrial Development Board, also serving as its Treasurer (*Id.*). The Board was developed to bring new industry to the Ankeny Community (*Id.*). Among the Board's many activities is the purchase and maintenance of land for leasing at lower rates to businesses interested in establishing offices and industries in Ankeny (*Id.*). Mr. Hermann also had served as Secretary of the Board (DBL Ex. 5, pg. 7). He devoted approximately two hours per month to the business of the Board (Tr. 207).

48. In 1984, Mr. Hermann served as Chairman of the Video Brochure Committee of the Ankeny Chamber of Commerce, preparing a video and brochure designed to bring new industry to the Ankeny community (DBL Ex. 5, pg. 6). Mr. Hermann developed these materials in accordance with his suggested theme adopted by the Chamber: *Land, Location and Lifestyle* (*Id.*).

49. Mr. Hermann became a charter member of Iowa's Golden Circle in 1986 (*Id.*). The Golden Circle is an alliance between all Iowa communities located within sixty minutes' driving distance from Des Moines, formed for the purpose of promoting this region of Iowa (*Id.*). The Golden Circle includes a nine county area which contains one-fourth of the total Iowa population (*Id.*). Mr. Hermann was instrumental in the formation and success of this organization, and devoted approximately one to two hours per month to its activities (DBL Ex. 5, pg. 7; Tr 208).

50. From 1986 through 1989, Mr. Hermann was a Board Member of Iowa's Golden Circle and a member of the Golden Circle Incubator Board (DBL Ex. 5, pg. 7). The Incubator Board was formed with the purpose of attracting young local entrepreneurs to Iowa's Golden Circle (*Id.*). The Board assists young people in forming their businesses, as well as renting them space for the conduct of their businesses at low rates, in order to provide a fertile climate in which the businesses may prosper (*Id.*). Mr. Hermann devoted approximately two hours per month to his duties with the Incubator Board (Tr. 209).

51. Within the last year, Mr. Hermann organized the Ankeny Historical Society, of which he was Chairman of the Board (*Id.*). This organization was formed by Mr. Hermann for the purpose of preserving Ankeny's unique heritage and history for posterity (*Id.*). Mr. Hermann spent approximately one hour per month in connection with this organization (Tr. 210).

52. In 1988, Mr. Hermann was guest columnist for the *Iowa Daily Business Record*, contributing articles for this Iowa business publication which discussed the status of industrial development in Ankeny (DBL Ex. 5, pg. 7).

53. Most recently, in 1989, Mr. Hermann was chosen to chair the Airport Authority, a newly-organized entity formed by three cities, including Ankeny, for the purpose of building a new airport (DBL Ex. 5, pg. 8). The project currently is budgeted at $3.2 million (*Id.*). Mr. Hermann's duties in his capacity as Chairman would have included the holding of hearings, the acquisition of land, and overseeing construction of the facilities (*Id.*).

54. Mr. Hermann also had been involved in two political campaigns other than his own, serving as Chairman of the Franzenberg Campaign for Governor of Iowa in Polk County, and as Chairman of the campaign for Bobby Baker for Polk County Sheriff (DBL Ex. 5, pg. 7).

55. Mr. Hermann had no broadcast experience, education or training, and he had never worked in a radio station (Tr. 194). The same is true of Stephanie Hermann (Tr. 144-145, 199-200). They plan to hire experienced personnel to serve on the staff (Tr. 147-148, 199-200). They will look for someone with radio sales experience who will ultimately be the sales manager (Tr. 199, 247). DBL will probably hire a consultant with experience in the programming area (Tr. 148, 200, 248).

Diversification

56. Neither the Hermanns nor DBL has any interest in any broadcast radio or television station, cable systems newspaper, or other medium of mass communications, other than DBL's application (DBL Ex. 3).

Auxiliary Power

57. DBL proposes to install auxiliary power systems at both the studio and transmitter sites (DBL Ex. 7).

William B. Roth

58. William B. Roth is a sole proprietor (Roth Ex. 1). Roth does not propose to be integrated into the management at the proposed station at Ankeny (Roth Ex. 2, Tr. 18).

59. Roth holds a 5 percent limited partnership interest in Mid-Ohio Radio Limited, an applicant for a new FM station to serve Columbus, Ohio on Channel 298A (File No. BPH-870515MV) and a 15 percent general partnership interest in Valley Radio Ltd., applicant for a new FM station at Fresno, California (File No. BPH-861231ME) (Roth Ex. 4).

60. Roth proposes to use auxiliary power generators at the studio and transmitter site (Roth Ex. 3).

CONCLUSIONS OF LAW

61. *V.O.B.* V.O.B. is entitled to 100% integration credit for the proposed integration of Steven and Darlene Van Oort as the General Manager and Business Manager/Public Affairs Manager/Assistant General Manager, respectively. Neither will have any other employment. V.O.B.'s proposal is enhanced by the Van Oorts' pledge to relocate to Ankeny if their application is granted. *Simmon Geller*, 102 FCC 2d 1443 (1985), *rev. denied*, FCC 86-110, March 17, 1986. V.O.B.'s application is further substantially enhanced by Mr. Van Oort's extensive and diverse past broadcast experience and slightly enhanced by Mrs. Van Oort's past broadcast experience. *James and Sharon Deon Sepulveda*, 3 FCC Rcd 9 (Rev. Bd. 1988). Mrs. Van Oort's female status entitles V.O.B. to a 50% female credit. *Horne Industries, Inc.*, 98 FCC 2d 601 (1984). V.O.B. is entitled to a slight additional credit for its proposal to have auxiliary power at both the studio and transmitter.

62. Neither V.O.B. nor its principals have any interest in any media of mass communication. Mr. Van Oort had proposed to terminate his employment position with WWJ/WJOI and did so in January of 1989.

63. *Dick Broadcasting, Ltd.* Upon the death of DBL's former 51% general partner, Richard Hermann, Stephanie L. Hermann became DBL's sole owner with a 100% ownership interest. Formerly Ms. Herman had a 49% ownership interest in DBL. Commission precedent allows an applicant to substitute another principal for a deceased principal who had been proposed as an integrated owner and to maintain its quantitative integration credit. *Golden State Broadcasting*, 94 FCC 2d 213, 215 (Rev. Bd 1983); *Peoples Broadcasting Corporation*, 92 FCC 2d 1303, 1321 (Rev. Bd. 1983), *recon. denied*, 94 FCC 2d 429 (Rev. Bd. 1983); *Rose Broadcasting Company*, 68 FCC 2d 1242 (1978). Before Mr. Hermann's death both he and Ms. Hermann were proposed for full-time integration.

64. Notwithstanding Mr. Hermann's assertion at the hearing that he not only would work 40 hours per week at the station, but also was prepared to work 60 to 70 hours per week at the station DBL is not entitled to receive full integration credit for Mr. Hermann's proposal. The fact is Mr. Hermann's proposal was incapable of being effectuated. At the time of the hearing Mr. Hermann was and planned to be engaged full time in the practice of law. He conceded that income from his law practice would be an important factor in making the radio station viable. Although Mr. Herman intended to rely on the help of two assistants in his practice in order to effectuate his proposal, he did acknowledge that it is not possible to delegate to assistants in the law business the way it is in the radio business because in a small town such as Ankeny his clients "like to depend on the fact that they got Dick Hermann as their lawyer." Although Mr. Hermann proposed a rigorous schedule of 6:00 a.m. to 9 a.m. and 4:30 p.m. to 8:00 p.m. (9:00 a.m. to 6:00 p.m. on Saturday) for radio business and 9:00 a.m. to 4:30 p.m. for the practice of law, he was ambivalent about being restricted to these hours and allowed that the amount of time he would spend at the station would be determined primarily by the needs of the business and that he anticipated to decrease the number of hours he would work at some point. Mr. Hermann testified that he realized that there would always be a need for him to manage the station, but that this would be a simple thing to accomplish since the station would be right next to his law office. Mr. Hermann frankly acknowledged that he would work only as much as needed and by hiring a professional staff and being available in the same building for consultation he would expect to be able to reduce the working hours at the station. He believed that management of the station would not require his presence "to crack the whip," but it would be sufficient that there be "the threat of being there to crack the whip."

65. Mr. Hermann's proposal of full-time integration was overly optimistic. His own reflections cast doubt on whether he could effectuate it. Mr. Herman not only could ill afford, but had no intention of allowing anything to interfere with his law practice. There is no doubt that he felt secure he could manage a business in addition to his practice of law (he had so proved in the past), but he had failed to give the Commission reasonable assurance

with respect to his proposed full-time participation. *See Kennebec Valley Television, Inc.*, 2 FCC Rcd 1240, 1241 (Rev. Bd. 1987); *Washington's Christian Television Outreach, Inc.*, 99 FCC 2d 395, 418 (Rev. Bd. 1987). Despite his stated intention to work full time at the station, his commitment to his law practice is deemed too major an undertaking to warrant complete confidence that he would regularly maintain a full time, 40 hour per week, work schedule at the station. *See Jarad Broadcasting Company Inc.*, 1 FCC Rcd 181 (Rev. Bd 1986), *recon. denied*, FCC 86R-81 (1986), *rev. denied*, FCC 87-312 (1987). As a matter of fact, Mr. Hermann's total time commitment to his practice and proposed station exceeds the 70 hour per week demarcation of the "outer limits of credibility." *Northern Sun Corp.*, 100 FCC 2d 1440, *rev. denied*, FCC 86- 135, released March 28, 1986; *Jarad, supra*.

66. Nevertheless, notwithstanding the debilities of Mr. Hermann's full-time integration proposal and despite the lack of record basis for determining the exact amount of time that Mr. Hermann would realistically work at the station, it is concluded that it is warranted that DBL be awarded part-time integration credit (20 hours per week) for Mr. Hermann's proposed participation. Mr. Hermann in the past had proven to possess the ability and determination to run two businesses contemporaneously. His proposal to work full time at the station is not viewed as gamesmanship, but rather as an overly optimistic endeavor to compete for the construction permit.

67. Mr. Hermann's part-time participation, except for his demise, would have been enhanced by his past and future residence in the proposed service area, and his civic participation.

68. Ms. Hermann's original 49% equity is entitled to credit for full-time integration which is enhanced by her past and future residence and her female status.

69. Taking cognizance of the fact that Ms. Hermann has succeeded to Mr. Hermann's equity interest, it must be noted that as the substituted party she stands in the shoes of her deceased husband, and is entitled to the integration credit only to the same extent he was. *See Birmingham Family TV, Inc.*, 91 FCC 2d 348, 350, 352 (Rev. Bd. 1982). In other words, but for Mr. Hermann's death DBL would have been entitled to credit for his part-time participation; Ms. Hermann cannot acquire a greater credit in substituting for him. *Cf. Muncie Broadcasting Corporation*, 89 FCC 2d 123, 130-32 (Rev. Bd. 1982). DBL then is credited with 49% full-time integration for Ms. Hermann's participation and 51% part-time integration for Mr. Hermann's proposed integration. The 49% full-time integration is enhanced by Ms. Hermann's past and future residence and her female status. The substituted 51% part-time integration of Mr. Hermann is enhanced by his past and future residence. *See Peoples, supra*. No credit carries over for his civic participation because Ms. Hermann does not merit civic participation in her own right. *Cf., e.g., Great River Broadcasting, Inc.*, 12 FCC 2d 35, 36 (Rev. Bd. 1968); *Richardson Broadcasting Group*, No. 88-407, DA 88-1255 (*Hearing Designation Order*) (Released September 13, 1988). Ms. Hermann has no record in the civic affairs of the proposed community of license. An applicant may receive credit for similar enhancing factors for the replacement principal, but Ms. Hermann's proposed civic involvement is prospective only. The award of civic enhancement credit under the *Policy Statement* rests on the rationale that the principal "has demonstrated a commitment to the problems and activities of the very community to which the licensee must direct its attentions." *Peoples Recon. Order, supra*, 94 FCC 2d 433 n.5. DBL also is entitled to a slight additional credit for its proposal to have auxiliary power.

ULTIMATE CONCLUSIONS

70. All of the applicants are equal under the diversification and auxiliary power criteria. Roth proposes no integration and can be eliminated. V.O.B. is entitled to credit of 100% full-time integration and DBL is entitled to 49% full-time integration and 51% part-time integration. The difference between the V.O.B.'s and DBL's integration credit is decisional and for this reason it is not necessary to compare V.O.B. and DBL on qualitative factors, *New Continental Broadcasting Co.*, 88 FCC 2d 830, 850 (Rev. Bd. 1981); *Van Buren Community Service Broadcasters, Inc.*, 87 FCC 2d 1018, 1022 (Rev. Bd. 1981). V.O.B. is the clear winner. The public interest would best be served by a grant of the V.O.B. application.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of V.O.B. Incorporated (File No. BPH-871102MH) IS GRANTED, and the applications of Richard and Stephanie Hermann d/b/a Dick Broadcasting, Ltd. (File No. BPH-871104MD) and William B. Roth (File No. BPH-871104MG) ARE DENIED.[1]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTE

[1] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-74

In re Applications of

DRI-FIVE, INC. File No. BPH-880222MU
(hereafter: Dri-Five)

MICHAEL A. PHILLIPS File No. BPH-880224MS
(hereafter: Phillips)

EMALEE C. PAYNE File No. BPH-880225MQ
(hereafter: Payne)

For Construction Permit for a
New FM Station on Channel 225A
in Elk Mound, Wisconsin

HEARING DESIGNATION ORDER

Adopted: February 7, 1990; Released: March 7, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Payne*. On June 16, 1989, Payne filed an amendment to her application which included a revised engineering proposal which applicant states she is "forced to make as a result of losing reasonable assurance of availability for [her] originally proposed site."[1] On July 14, 1989, Phillips filed a motion to dismiss the amendment. On July 27, 1989, Payne filed a supporting Petition for Leave, which engendered responsive pleadings.

3. Phillips argues that Payne's brief petition for leave to amend fails to demonstrate good cause for acceptance of her amendment. Without such a demonstration, Phillips contends that Section 73.3522(a)(6) of the Commission's Rules dictates that the amendment cannot be considered. Phillips further argues that: (1) there was no explanation for the loss of Payne's original site; (2) there was no demonstration that Payne ever had reasonable assurance of the availability of the original site; and (3) neither Payne nor the original owner of the original site has presented an affidavit regarding the circumstances leading to Payne's specification of that site.

4. Dri-Five's motion to dismiss the Payne amendment essentially repeats the arguments contained in the Phillips' petition and further states that Payne's May 18, 1989 amendment failed to provide evidence of good cause or to state specific circumstances which would warrant acceptance of its late-filed amendment. Dri-Five contends that Payne's failure to establish by "documentary showing" the relevant facts and circumstances concerning the loss of the original site should prevent her late-filed amendment from being accepted.

5. A post "cut-off" predesignation amendment will be returned by the Commission absent "good cause" for its untimeliness. 47 C.F.R. § 73.3522(a)(6). "Good cause" is established when an applicant acts with due diligence in filing a curative amendment, the need for which has arisen for a reason other than the applicant's voluntary act. *Alegria I, Inc.*, 65 RR 2d 1562 (1989); *Elijah Broadcasting Corp.*, 65 RR 2d 461 (Rev. Bd. 1988). On May 18, 1989, Payne reported to the Commission that her originally proposed transmitter site had become unavailable. Steven Harmon, the owner of Payne's original site, informed Payne's counsel that he was unilaterally revoking the prior written assurance of availability that he supplied Payne on February 9, 1988. Payne's letter of May 18 reported that she had secured a suitable alternate site and that her application would be amended with a revised engineering proposal and site certification in the immediate future. On June 6, Payne reported that she was facing difficulty in completing the revised engineering proposal. On June 16, 1988, Payne filed an amendment to her application which included the revised engineering proposal (File No. BPH-890616MH). On July 27, in response to Phillips' initial objections, Payne requested that "good cause" be found for acceptance of her engineering amendment. Ample evidence of good cause exists for the acceptance of Payne's late-filed amendment. As reported by Payne in her signed declaration of May 18, immediately upon learning of Harmon's revocation, she began a search for an alternate transmitter site. On May 10, Payne received written assurance that she could use an alternate site and proceeded to prepare a revised engineering proposal. When preparation of the revised engineering was delayed, Payne made a progress report to the Commission. Payne's actions meet the Commission's due diligence requirement for "good cause." *Elijah Broadcasting, supra* (due diligence found where an applicant timely informed the Commission of the loss of its transmitter site, immediately began a search for a suitable alternative, voluntarily submitted a progress report, and specified a new site within six months of the loss).

6. Payne also meets the second requirement of "good cause": loss of Payne's original transmitter site was neither foreseeable nor occasioned by the voluntary act of the applicant. Loss resulted solely from the unilateral revocation of the site owner. *Alegria I, supra*. While Payne did not establish by "affidavit" that the loss of its original site was unforeseeable, there is ample documentary evidence that Payne's loss of the original site was unforeseeable and that Payne's diligent actions subsequent to the loss of the original site meet the Commission's requirements for a showing of "good cause" for the acceptance of the late-filed amendment under Section 73.3522(a)(6) of the Commisison's Rules. Accordingly, good cause having been shown, the Petition for Leave to Amend submitted by Payne will be granted and the corresponding amendment will be accepted. Further, the Motion to Dismiss filed by Phillips and the Oppositions to Petition for Leave to Amend filed by Phillips and Dri-Five will be denied.

7. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Payne have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Payne would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

8. Dri-Five, Phillips and Payne have petitioned for leave to amend their applications on the dates specified below. The accompanying amendments were filed after June 6, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Dri-Five	June 15, 1988; July 13, 1988
Phillips	July 31, 1989; December 22, 1989
Payne	June 16, 1989

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Payne would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That Payne's July 27, 1989, Petition for Leave to amend IS GRANTED and that the corresponding amendment IS ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That the Motion to Dismiss filed by Phillips and the Oppositions to Petition for Leave to Amend filed by Phillips and Dri- Five ARE DENIED.

13. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Dri-Five and Phillips ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

14. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] On May 18, 1989, Payne, in a short note to the Commission, advised that the originally proposed site had become unavailable and that her application would be amended in the immediate future. On June 6, 1989, Payne's attorney indicated that more time was required to specify a new site.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-421

In re Applications of

ROBERT L. PURCELL d/b/a BIG BAY BROADCASTING — File No. BPH-851028MI

CWA BROADCASTING, INC. — File No. BPH-851028MJ

Philip & Eleanor D'Adamo d/b/a D'ADAMO COMMUNICATIONS — File No. BPH-851028ML

For a Construction Permit
for a New FM Station at
Cambridge, Maryland

ORDER

Adopted: February 27, 1990; Released: March 7, 1990

By the Commission:

1. The Commission has before it an application for review of the Decision of the Review Board in this case, 4 FCC Rcd 4676 (1989), filed by Robert L. Purcell d/b/a Big Bay Broadcasting on July 6, 1989; an application for review of the same Decision filed by Philip and Eleanor D'Adamo d/b/a D'Adamo Communications on July 7, 1989; a consolidated opposition to the applications for review filed by CWA Broadcasting, Inc. on July 18, 1989; and comments on the applications for review filed by the Chief of the Commission's Mass Media Bureau on July 21, 1989.

2. IT IS ORDERED pursuant to 47 C.F.R. § 1.115(g) that the applications for review filed by Big Bay Broadcasting and D'Adamo Communications ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-110

In the Matter of

Amendment of Section 73.202(b), RM-6639
Table of Allotments,
FM Broadcast Stations.
(Harlem, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 21, 1990; Released: March 7, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of TM Broadcasting (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 4046 (1989), proposing the allotment of Channel 236A to Harlem, Georgia, as that community's first local broadcast service. Petitioner filed comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. Channel 236A can be allotted to Harlem in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1] We believe the public interest would be served by allotting Channel 236A to Harlem, Georgia, since it could provide a first local service to that community.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 20, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Harlem, Georgia	236A

4. The window period for filing applications will open on **April 23, 1990,** and close on **May 23, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are North Latitude 33-24-54 and West Longitude 82-18-42. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-91

In the Matter of

Amendment of Section 73.202(b), RM-7108
Table of Allotments,
FM Broadcast Stations.
(Crestview, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 1990; Released: March 7, 1990

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Crestview Broadcasting Company, Inc. (petitioner), seeking the substitution of Channel 284C1 for Channel 284C2 at Crestview, Florida, and the modification of its license for Station WAAZ(FM). Petitioner states it will apply for the channel, if allotted.

2. Channel 284C1 can be substituted for Channel 284C2 at Crestview in compliance with the minimum distance separation requirements with a site restriction 21.9 kilometers (13.6 miles) south,[1] provided that the permittee of Station WAAO(FM), Channel 284A at Andalusia, Alabama, relocates to Channel 279A as ordered in MM Docket No. 86-455. *See* 2 FCC Rcd 7263 (1987).

3. We believe the public interest would be served by proposing the substitution of Channel 284C1 for Channel 284C2 at Crestview, Florida. We shall also propose to modify the license of Station WAAZ(FM) to specify Channel 284C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 284C1 at Crestview or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

4. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Crestview, Florida	284C2	284C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James T. Whittaker, President
Crestview Broadcasting Co., Inc.
P. O. Box 267
Crestview, Florida 32536
(Petitioner)

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the permittee of Station WAAO(FM) as follows:

Companion Broadcasting Service, Inc.
P. O. Box 987
Andalusia, Alabama 36420

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 30-33-58 and West Longitude 86-33-17.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-485

In the Matter of

Amendment of Section 73.202(b), RM-6942
Table of Allotments,
FM Broadcast Stations.
(Creston, Iowa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 22, 1990; Released: March 7, 1990

By the Chief, Allocations Branch:

1. At the request of G.O. Radio, Ltd. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 8113 (1989), proposing the substitution of Channel 267C3 for Channel 269A at Creston, Iowa, and the modification of its license for Station KITR-FM to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 267C3 for Channel 269A at Creston, Iowa, since it could enable Station KITR-FM to expand its coverage area. Channel 267C3 can be allotted to Creston in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site.[1] As proposed, we will also modify petitioner's license for Station KITR-FM to specify operation on Channel 267C3.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 20, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Creston, Iowa	267C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of G.O. Radio, Ltd., for Station KITR-FM, Creston, Iowa, IS MODIFIED to specify operation on Channel 267C3, in lieu of Channel 269A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-05-41 and West Longitude 94-22-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-174

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Red Oak, Iowa, and Falls City,
Nebraska)[1]

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 1990; Released: March 7, 1990

By the Chief, Allocations Branch:

1. By *Notice of Proposed Rule Making*, 4 FCC Rcd 4904 (1989), the Commission proposed, on its own motion, to substitute Channel 237C3 for Channel 237A at Red Oak, Iowa, and modify the license of Station KOAK-FM accordingly. Montgomery County Broadcasting Co., Inc. ("Montgomery County"), licensee of Station KOAK-FM, submitted timely comments stating its intention to apply for the channel, if allotted. No other comments were received.

2. In reviewing the Commission's records, we have found that the allotment at Red Oak conflicts with the existing unoccupied and unapplied for Channel 237A allotment at Falls City, Nebraska. Red Oak and Falls City are located 111 kilometers apart while the Commission's rules stipulate a minimum separation of 142 kilometers between co-channel Class A and C3 stations. On September 22, 1987, the Commission cancelled the construction permit for Station KTNC-FM on Channel 237A at Falls City. The construction permit record was deleted from the Commission's engineering data base, but was not replaced with an allotment record. No 30-day filing window for applications for Channel 237A at Falls City was opened. Thus, we were unaware of the conflict at the time the instant *Notice* was issued. However, the conflict can be resolved if Channel 267A is substituted for Channel 237A at Falls City. Channel 267A can be allotted to Falls City in compliance with the Commission's minimum distance separation requirements without a site restriction.[2] Therefore, we are issuing this *Further Notice* proposing the substitution of channels at Falls City, Nebraska, in order to permit the upgrading of Station KOAK-FM at Red Oak, Iowa. Counterproposals to the allotment of Channel 237C3 at Red Oak will not be considered since an opportunity for the filing of such pleadings has already been provided.

3. We believe the public interest would be served by proposing the substitution of Channel 267A for Channel 237A at Falls City, Nebraska, since it could permit Station KOAK-FM at Red Oak, Iowa, to upgrade its operation from Channel 237A to Channel 237C2. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Falls City, Nebraska	237A	267A
Red Oak, Iowa	237A	237C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 27, 1990,** and reply comments on or before **May 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David Jennings, Vice President and General Manager
Montgomery County Broadcasting Co., Inc.
P.O. Box 465
Red Oak, Iowa 51566

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The community of Falls City, Nebraska, has been added to the caption.

[2] The coordinates for this allotment are North Latitude 40-03-39 and West Longitude 95-36-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BENKO BROADCASTING COMPANY (Assignor) File No. BAPCT-890310KE

and

LANSING 53, INC. (Assignee)

For Assignment of Construction Permit of Station WLAJ-TV, Lansing, Michigan

LANSING 53, INC. File No. BMPCT-890414KF
For Modification of Facilities for Station WLAJ-TV, Lansing, Michigan

BENKO BROADCASTING COMPANY File No. BMPCT-890501KF

For Extension of Time to Construct Station WLAJ-TV, Lansing, Michigan

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 1990; Released: March 2, 1990

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it for consideration: (a) the above-captioned application for assignment of the construction permit of Station WLAJ-TV, Channel 53, Lansing, Michigan, from Benko Broadcasting Company (Benko) to Lansing 53, Inc. (Lansing 53); (b) petitions to deny that application, filed April 24, 1989, by WTMJ, Inc. (WTMJ), licensee of Station WSYM(TV) in Lansing, and by Jackson TV Co. (Jackson), permittee of Station WHTV(TV), Jackson, Michigan;[1] (c) the above-captioned application of Lansing 53 for modification of facilities;[2] (d) the above-captioned application of Benko for an extension of time to construct the station; (e) an informal objection to that application, filed by WTMJ; and (f) related pleadings.

2. By way of background, the underlying construction permit for Station WLAJ-TV was granted on January 15, 1982, and Benko has been afforded several extensions of time in which to construct the station. The most recent extension was granted November 14, 1988, over the objections of Joel I. Ferguson (Ferguson), who is now the president and 100-percent owner of Lansing 53. *Benko Broadcasting Company*, 3 FCC Rcd 6838 (1988). After the pleading cycle had ended in that proceeding, but before the staff's decision was adopted, Ferguson apparently approached Benko with a proposal to purchase the construction permit. According to the applicants, Benko rejected Ferguson's offer, but in January 1989, Benko began to reconsider its decision and entered negotiations with Ferguson for the sale. The parties entered an asset purchase agreement for the station on March 6, 1989. By the terms of the agreement, Lansing 53 agreed to pay up to $450,000 for the construction permit or such amount that the Commission finds to have been reasonably and prudently expended in the construction of the station. The assignment application was filed March 10, 1989, and Lansing 53 requests a waiver of Section 73.3535(d) of the Commission's Rules, which proscribes the filing of an assignment application for a construction permit after the expiration of the initial construction period.

PLEADINGS OF THE PARTIES

3. In its petition to deny, WTMJ argues that Section 73.3535(d) precludes Commission consideration of the assignment application, since the application was filed after the expiration of the initial construction period. WTMJ maintains that, even if Section 73.3535(d) were waived to permit the filing of the application, the permittee would be unable to meet the requirements of Section 73.3535(b). That rule provides that modification and assignment applications of unbuilt stations filed after the first 12 months of construction must be accompanied by a showing that substantial progress has been made in the construction of the station or that circumstances beyond the permittee's control prevented timely construction of the facility. That, WTMJ argues, has not been done here, since the station is not yet operational and since the application does not indicate any progress in the most recent construction period. Further, WTMJ states that Lansing 53 has not certified that it would immediately begin constructing the station, as is required by Section 73.3535(b).

4. WTMJ also contends that questions regarding Benko's character are raised based upon its prior representations to the Commission. In that connection, it notes that the Commission's latest extension of Benko's construction permit was based, in part, on Benko's representations that it was proceeding toward construction of the station. In fact, WTMJ alleges, the permittee was negotiating for the sale of the construction permit while the extension application was still pending. WTMJ argues that, although the Asset Purchase Agreement was not signed until March 3, 1989, Benko should have disclosed its previously formed intent to assign the construction permit and that its failure to do so before March was in violation of Sections 73.3613 and 1.65 of the Rules. Since it is the Commission's policy not to extend construction permits solely for the purpose of enabling a permittee to recoup its out-of-pocket expenses, WTMJ contends that Benko therefore had a motive to withhold this information from the Commission. Finally, WTMJ argues that, by filing objections to Benko's extension application, Ferguson was using the Commission's processes as leverage either to force Benko to sell the construction permit or to secure favorable terms for such a sale. Such activity, WTMJ asserts, is an abuse of the Commission's processes warranting Ferguson's disqualification.

5. Jackson, in its petition to deny, essentially makes the same arguments as those advanced by WTMJ. Further, Jackson adds that the only indication that any construc-

tion progress was made during the most recent construction period is the submission of check stubs for legal fees, contract labor, and rental for an electrical generator. During that same period, however, Jackson notes that Benko's $20,000 transmitter deposit was returned, and it therefore concludes that some of the progress claimed has been undone with the return of the transmitter. Jackson also contends that Benko has deliberately attempted to deceive the Commission by claiming that substantial progress had taken place, when, in fact, that was not the case. The return of the transmitter, it states, confirms this fact. Jackson further asserts that Benko has not documented its claimed expenses sufficiently, as required by Section 73.3597 of the Rules. In that regard, Jackson points to several payments to principals and associated companies, as well as to American Express, which have not been explained. Jackson also argues that the Asset Purchase Agreement contains clauses whereby Lansing 53 could refuse to consummate the sale if the Commission imposes a "commercially unreasonable" time restraint on the completion of construction.

6. On May 1, 1989, Benko filed its current application for a further extension of its construction permit. In support of the application, Benko states that, during the preceding five months, it has secured three-phase electrical power for the transmitter site and negotiated with suppliers for the acquisition of studio equipment. Benko also states that it ordered the remaining 660 feet of its tower and had scheduled completion of its tower by October 1, 1989. The application also includes a declaration from Ferguson, on behalf of Lansing 53, whereby the assignee made a firm commitment to construct the station and to make it operational by January 1, 1990. The application further reveals Lansing 53's plans to upgrade the facilities of the station, but states that further progress cannot take place until the pending assignment and modification applications are approved. Benko maintains that it has made significant progress in constructing the tower and has completed construction of the transmitter building. Benko reiterates that it has spent more than $458,000 in its efforts to get the station on the air. In a subsequent amendment to its extension application, Benko states that, on May 3, 1989, construction of the tower was completed to the height of 340 feet.

7. On May 8, 1989, in opposition to WTMJ's and Jackson's petitions, Benko and Lansing 53 first requested waiver of Section 73.3535(d) of the Rules. The applicants argue that the rule is intended to expedite the provision of new broadcast service to the public and that grant of the assignment would accomplish that goal, since Ferguson has made a firm commitment to complete and upgrade the station. They add that grant of the assignment application would also serve the public interest by assigning the construction permit to a locally owned and minority-controlled corporation. Lansing 53 notes that it has expended more than $100,000 in preparation for the construction of the station. Additionally, Benko and Lansing 53 maintain that Benko has made substantial progress in the construction of the station, as outlined in its extension application above, and that it is therefore in compliance with Section 73.3535(b) of the Rules. Moreover, they argue that construction of the station was delayed by financial difficulties and by unpredictable winter weather in the Lansing area.

8. In response to petitioners' assertions, Benko further contends that the return of its transmitter does not indicate regression in its construction or lack of candor in its filings. The transmitter was returned, it argues, because Lansing 53 intends to upgrade the station's facilities, and the transmitter is unnecessary. Moreover, Benko maintains that it was candid as to the status of construction during the pendency of its previous extension request, since the equipment was not returned until February 1989, or approximately two months after that extension application was granted. Benko further asserts that it did not begin serious negotiations with Lansing 53 until well after the grant of the January 1988 extension application and thus did not lack candor or misrepresent facts to the Commission. Lansing 53 argues that, in September 1988, after the pleading cycle on that extension request had ended, Ferguson instructed his counsel to draft a "discussion" document for the acquisition of the permit. This document was presented to Benko in October 1988, but was rejected. Negotiations between the parties resumed in earnest in January 1989, and a final agreement was not signed until March 6, 1989. Benko and Lansing 53 contend that their final agreement was actually a modification of the original September document and that some of the language referring to an earlier time had inadvertently not been eliminated. Thus, while it might appear that the final agreement had been reached for some time, the applicants maintain that such was not actually the case. Lansing 53 further denies that Ferguson objected to the previous extension request merely as a form of leverage against Benko, since he filed his petition more than a year before the "discussion" document was prepared, and Commission action on the application took place well before the parties discussed the sale in earnest.

9. WTMJ challenges Benko's contention that waiver of Section 73.3535(d) is warranted, arguing that the permittee cannot rely on the pendency of an assignment application to justify grant of its extension. WTMJ further retorts that the existence of a minority buyer has not been shown to warrant waiver of the rule. WTMJ also claims that Benko and Lansing 53 misled the Commission when they represented that the new transmission system would enhance service to the area, since the above-captioned modification application reduces the station's visual effective radiated power and results in a Grade B loss area of more than 400,000 persons. WTMJ reiterates its previous argument that Benko has failed to demonstrate that substantial progress has taken place and has therefore failed to lay a foundation for consideration of the assignment application at this late date. WTMJ further maintains that Benko was not forthright and candid with the Commission because it was negotiating with Lansing 53 for the sale of the station while the previous extension request was still pending. WTMJ also points to alleged misrepresentations Benko made with respect to the progress of construction, namely the date on which electrical service was available at the site and the date on which the first 340 feet of the tower were completed. Since Benko has already been admonished by the staff in its earlier ruling, *Id.*, to exercise greater care in its filings, WTMJ contends that a pattern of misrepresentations emerges. WTMJ further states that Ferguson abused Commission processes by opposing Benko's previous extension request as leverage to force Benko to sell. WTMJ also alleges that there has been an unauthorized transfer of control of the permittee to Lansing 53, since the modification application was filed by Lansing 53 and since the assignee is seeking a network

affiliation. Additionally, WTMJ alleges that Lansing 53 has hired engineering consultants and has planned the station's programming.

10. On May 15, 1989, WTMJ filed an informal objection to Benko's extension request. WTMJ maintains that Benko relies principally on efforts taken by Benko before the current permit term or during the last three weeks of the construction period and on actions of the proposed assignee. All, it contends, should be discounted. WTMJ argues that the only issue is whether Benko itself made substantial progress throughout the most recent extension term. With respect to Benko's contention that, during the most recent construction period, it had paid to secure provision of electrical service, WTMJ notes that Benko had claimed the completion of electrical service construction in May 1988. WTMJ further argues that it is irrelevant that Benko has negotiated with equipment suppliers, since the question is not whether an equipment supplier is willing to furnish the goods, but whether the permittee has actually purchased them and that Benko has not done so. Additionally, WTMJ points to Benko's recent statement that it had just completed the height of the tower to 340 feet, but that height, says WTMJ, was claimed to have been reached by April 1988.

11. WTMJ further maintains that Benko cannot blame its failure to build on its inability to secure financing, since financial inability is not a basis for extension. Additionally, WTMJ argues that Benko has failed to explain why winter weather prevented construction, since it did not even order steel for the tower until late April 1989, or after the worst of the winter weather had passed. WTMJ suggests that the real reason for the delay was Lansing 53's decision to modify the station's facilities. That, WTMJ argues, was a business decision and cannot form the basis for the grant of the extension. WTMJ further argues that, in granting Benko its previous extension, the Commission indicated that it would be the final one, and the permittee was cautioned that construction was expected to be completed within the time provided. WTMJ also contends that Benko may have misled the Commission in obtaining its last extension when it informed the Commission that it had undertaken a stock offering to finance the remainder of construction and expected to be on the air in June, 1988. WTMJ maintains that there is no indication of such a stock offering and that Benko has now given up trying to build the station. In that connection, WTMJ notes that Benko no longer commits to placing the station on the air itself. WTMJ therefore concludes that Benko's extension application should be denied.

12. In response to WTMJ's informal objection to the extension application, Benko and Lansing 53 argue that WTMJ's pleading is essentially a petition to deny, which is an unauthorized pleading in the context of an extension of time proceeding. The applicants further challenge WTMJ's contention that Lansing 53's efforts are irrelevant, stating that the assignee's efforts provide compelling evidence that grant of the assignment would serve the public interest. Benko and Lansing 53 further maintain that an unauthorized transfer of control of the permittee has not taken place. In that connection, they note that the Asset Purchase Agreement specifically precludes that possibility. Additionally, they assert that, when compared to the alternative of cancelling the construction permit and opening the channel to new applicants, grant of the extension and assignment applications would be the quicker means of initiating service on the channel. The applicants further question the appropriateness of WTMJ's comments, since it has never objected to one of Benko's previous extension requests. In that connection, they maintain that WTMJ fears Ferguson's acquisition of the permit as a threat to WTMJ's operation of Station WSYM(TV). Benko and Lansing 53 reiterate that minority ownership of a station is a factor to be weighed in determining whether to waive the rules, but they acknowledge that such fact alone cannot warrant grant of the extension and assignment applications. Here, they state that waiver of Section 73.3534 is warranted, since that will ensure the earliest possible initiation of service on the channel.

13. In a declaration dated May 25, 1989, R. Charles McLravy, President of Benko, states that Benko erred in its most recent statement that its tower is only 340 feet tall. He states that it was previously 340 feet and, with a recent 20-foot extension, is now 360 feet in height. McLravy further asserts that electrical service to the site was not provided in May 1988. Rather, the installation at that time stopped approximately 20 feet from the transmitter building. In January 1989, electrical service was extended to the transmitter building and tower. Consequently, McLravy concludes that Benko did not misrepresent the status of construction in previous extension applications.

DISCUSSION

14. In assessing the merits of a petition to deny, a two-step analysis is required under Section 309(d)(1) and (2) of the Communications Act. The first test is whether a *prima facie* case has been made. If so, we next consider whether there is a substantial and material question of fact to warrant further inquiry. With respect to the assignment and extension applications, we presume that a *prima facie* case has been made. Accordingly, the issue is whether substantial and material questions of fact have been raised to warrant further action.

15. Before any of the pending applications can be granted, Sections 73.3534(b) and 73.3535(b) of the Rules require a showing of one of the following: (1) construction is complete and testing is underway; (2) substantial progress in construction has been made; or (3) circumstances beyond the permittee's control prevented construction and the permittee has nevertheless taken all possible steps to resolve the problem and proceed with construction. The Commission does not require that construction be completed; rather, we are concerned that substantial and sustained progress has been made. In that connection, we do not set a minimum or maximum number of extensions allowed a particular permittee, so long as progress is evident from one extension period to the next. We believe that Benko has met the standard established by the above rules. In granting Benko's previous extension request, the staff found that the local electric company had completed construction of three-phase power to the transmitter site. During the most recent extension period, electrical service was extended to the transmitter building and tower. Also in its earlier application, Benko reported that its tower was complete to the 340-foot level. The tower has now been extended an additional 20 feet,[3] and the permittee has ordered the steel for the rest of the tower, for which it has paid $5,000.[4] While Benko did return a transmitter it had acquired, it did so only because the proposed modification application specifies different transmitting equipment, and the old

transmitter could no longer be used. Clearly, this could not be accomplished with the old transmitter and modified authorized facilities. While Benko has not demonstrated that it completed construction during the most recent construction period, we nevertheless believe that, on balance, it has demonstrated steady progress sufficient to warrant grant of its extension application. Additionally, Lansing 53 has stated that, following grant of the applications, it will immediately proceed with the further construction of the station, building upon the progress of Benko.[56]

16. Turning to the assignment application, Jackson maintains that, under the terms of the Asset Purchase Agreement, Lansing 53 could refuse to consummate the sale if the Commission imposes a time restraint for the completion of construction which is commercially unreasonable, and Jackson contends that this is not in the public interest. There is no merit to Jackson's argument. It is well established that grant of a long-form assignment application extends the construction permit at least a year from the date of consummation. 47 C.F.R. Section 73.3535(c). Such a period of time appears adequate in light of Lansing 53's projection that the station would be operational within seven months of its acquisition.

17. WTMJ further argues that an unauthorized transfer of the construction permit has taken place, since the modification application was filed by Lansing 53 and since the assignee has sought a network affiliation for the station. WTMJ further contends that Lansing 53 has hired engineering consultants and has planned the station's programming. It is not unusual for a prospective assignee of a station to file a modification application on behalf of the permittee. In fact, Section 73.3517(a) of the Commission's Rules specifically permits a proposed assignee to file applications in its own name to make changes in the facilities of the station it intends to acquire. Since the assignee is the entity that will be operating the station, it should have an opportunity to propose the facilities it deems appropriate, and to do so, it must engage engineering consultants. We would also expect a proposed purchaser of a station to have formulated some plans for the station's operation, including the acquisition of a network affiliation. Consequently, we cannot fault Lansing 53 for doing so here. In any event, there has been no showing that Lansing 53 has assumed control of the station's construction or the hiring and firing of station employees or building contractors, and we are unable to conclude that an unauthorized transfer of control has occurred. Notwithstanding the WTMJ's arguments, we cannot conclude that the petitioner has established a *prima facie* case regarding an unauthorized transfer of control of the construction permit.

18. Jackson also contends that Benko has failed to document its expenses sufficiently for the Commission to determine that they were legitimately and prudently made solely for the preparation, filing, and advocacy of the construction permit. By the terms of the Asset Purchase Agreement, Lansing 53 has agreed to pay up to $450,000 for the permit or such amount that the Commission finds to have been reasonably and prudently expended in the construction of the station. Benko submits an itemized list of expenses it incurred, totalling $464,712.52. Most are supported only by check stubs, but some are documented by cancelled checks or by statements or bills from the purveyors of services. After examination of the supporting documentation, we are able to conclude that only $219,402.66 has been adequately documented as having been spent for the preparation, filing, and advocacy of the construction permit.[7] Accordingly, we will approve reimbursement not in excess of that amount.

19. As a final matter, we consider the questions of misrepresentation and obstruction of the Commission's processes raised by the petitioners. Jackson and WTMJ maintain that Benko and Ferguson misled the Commission by failing to disclose their negotiations while the previous extension application was pending. Benko filed that extension request on January 14, 1988, but it was not until months after the pleading cycle was ended that Ferguson had a "discussion" document prepared to acquire the station. Benko rejected the offer, however, and did not reconsider its decision until January 1989, or two months after the Commission's decision was released. There is no obligation for either party of a transaction to report rejected offers to the Commission. In that regard, Section 73.3613(b) specifically requires the filing of "contracts, instruments or documents" relating to the ownership of a station, but there is no similar reporting requirement for unexecuted agreements, intentions, preliminary negotiations, or unsuccessful discussions. Similarly, Section 1.65 requires applicants to maintain the accuracy and completeness of information furnished to the Commission, but rejected offers and unsuccessful negotiations to change that which is reported would not necessitate the filing of an amendment. Consequently, the failure of either Benko or Ferguson to report their aborted discussions does not constitute a lack of candor. WTMJ further contends that Benko may have misled the Commission in obtaining its last extension by stating that it had undertaken a stock offering to finance the remainder of construction and that it expected to be on the air in June 1988. While Benko, in its January 1988 extension application, did state that it had undertaken a stock offering to finance the construction of the station, it apparently was not a successful effort. Moreover, the stock offering had no bearing on the grant of the extension application, since the means taken by a permittee to finance construction is not taken into consideration. Further, while the permittee might have hoped to be on the air in June 1988, circumstances arose which changed that estimate. By no means, however, could that constitute misrepresentation on the permittee's part. Further, Jackson argues that Ferguson's attempt to acquire the construction permit improperly influenced Benko to sell the construction permit or to secure favorable terms for such a sale. This allegation, however, is only speculative and is unsupported by an affidavit of any individual having personal knowledge thereof. Even if we were to find that WTMJ and Jackson had raised a *prima facie* case, the applicants' responses to petitioners' assertions lead us to conclude that petitioners have not raised any substantial or material questions of fact warranting further inquiry. We are therefore unable to conclude that Ferguson abused the Commission's processes or that either party lacked candor or misrepresented its position to the Commission.

20. Accordingly, having found that neither the petitioners nor objector have raised a substantial and material question of fact, the petitions to deny the assignment application, filed by WTMJ and Jackson ARE DENIED; the informal objection to the extension application IS DENIED; Lansing 53's request for waiver of Section 73.3535(d) of the Rules IS GRANTED; the assignment

application IS GRANTED with reimbursement by Lansing 53 to Benko not to exceed $219,402.66; Lansing 53's modification application IS GRANTED; and Benko's extension application IS GRANTED subject to the consummation of the assignment.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

FOOTNOTES

[1] Station WLAJ-TV would serve much the same area as that served by WTMJ and Jackson and, when completed, would compete for advertising with them. Consequently, both WTMJ and Jackson have the requisite standing to file the petitions.

[2] The station is currently authorized to operate with a nondirectional antenna at an effective radiated power (ERP) of 1420 kW. Lansing 53 proposes to utilize a directional antenna and to reduce the ERP to 933 kW.

[3] Benko admits that it erred when it stated that it had reached the 340-foot height for its tower. The correct height, it asserts, is 360 feet. Since the misstatement was unintentional and, in fact, contrary to Benko's best interests, we find no misrepresentation on Benko's part in this regard.

[4] While it is true that, under certain circumstances, we may discount somewhat a flurry of activity late in the construction period, we cannot disregard it altogether, especially if, as here, it represents a pattern of sustained progress in the construction of a station.

[5] While Section 73.3535(d) generally proscribes the filing of modification and assignment applications after the initial construction period, we believe that the sustained progress demonstrated here by Benko should suffice to allow the permittee to seek whatever changes it deems appropriate in the ownership and facilities of the station. Therefore, we will waive the rule to the extent necessary to consider the assignment and modification applications.

[6] It appears that grant of Lansing 53's modification application would result in a loss area to some of WLAJ's predicted Grade B service area. While the Commission does not generally favor proposals envisioning a loss of service, the existence of other services in the proposed loss area mitigates the impact. Here, Lansing 53 proposes to directionalize its antenna to provide an elliptical service area on a north-south axis. The loss areas would be to the east (notably Ann Arbor, Michigan) and to the west (Battle Creek, Michigan). It appears, however, that there are multiple other signals in the loss area from Lansing, Detroit, Flint, and Toledo, Ohio, on the east and from Lansing, Kalamazoo, Grand Rapids, and Battle Creek to the west. Moreover, the station is not yet operational, and the loss of service is only theoretical; consequently, our concern over the "loss" of service is not as great as it might be if the station were in operation. *See, John McCucheon, d/b/a MCC Communications*, 4 FCC Rcd 2079 (1989). We therefore find that grant of the modification application is warranted.

[7] Check stubs -- as opposed to copies of cancelled checks and receipts -- are insufficient means of documenting expenses, and claimed expenses supported solely by check stubs have been disallowed. Those expenses supported by either copies of cancelled checks or bills from the purveyors of services were allowed. Should Benko have any additional documentation for its claimed expenses, it should submit such information to the staff.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166
Phase II, Part 1

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers

ORDER

Adopted: February 27, 1990; Released: February 28, 1990

By the Chief, Common Carrier Bureau:

1. By an Order in the captioned docket the Commission found that certain strategically-set special access rates were unlawful.[1] In that Order, the Commission directed the local exchange carriers (LECs) whose rates it found to be unlawful to make refunds of a portion of the earnings derived from the unlawful rates. The Commission directed the affected LECs to file, within 40 days of the release of the *Implementation Order*, reports describing in detail their efforts to effectuate these refunds. In addition, the Commission required the LECs to place the total refund amounts in interest-bearing escrow accounts pending final disbursement of the refunds. The deadline for compliance with these reporting and escrow requirements is March 5, 1990. The Commission further directed that the LECs make the required refunds to their customers within 80 days of the release of that Order. Finally, the Commission delegated to the Bureau the authority to oversee the refund process.[2]

2. On February 14, 1990, Cincinnati Bell Telephone Company (CBT) filed a request for stay of the escrow and refund requirements of the *Implementation Order*. On February 21, 1990, the Ohio Bell Telephone Company and Wisconsin Bell, Inc., filed a similar motion for stay.

3. We deny the stay requests insofar as petitioners request a stay of the requirement that the carriers place funds in escrow. No irreparable harm will result from the requirement that carriers place the amounts of the refunds in interest-bearing escrow accounts as required by the Commission's Order.

4. After we have had an opportunity to review the carriers' refund plans we will issue a further Order concerning disbursement of the escrowed funds. Refunds will not issue automatically. Carriers that are required to place the refund amounts they have calculated in escrow accounts shall make no disbursement prior to issuance of our further Order concerning their refund plans. That Order will provide at least 30 days' notice before refunds are disbursed.

5. The requests for stay of the requirements that refunds be disbursed will be addressed in a subsequent Order.

6. Accordingly, IT IS ORDERED that the request for stay filed by Cincinnati Bell Telephone Company IS DENIED insofar as that request seeks a stay of the requirement that carriers place funds in escrow.

7. IS IS FURTHER ORDERED that the motion for stay filed by the Ohio Bell Telephone Company and Wisconsin Bell, Inc. IS DENIED insofar as that motion seeks stay of the requirement that carriers place funds in escrow.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 5 FCC Rcd 412 (1990) (*Implementation Order*).

[2] *Id.* at 413.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Centel Telephone Company Revisions to Tariff F.C.C. No. 1 — Transmittals No. 132 and 133

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: February 28, 1990

By the Chief, Common Carrier Bureau:

1. On November 16, 1989, Centel Telephone Company (Centel) filed Transmittal No. 132 proposing rate increases based, in part, on separations changes. The new rates, scheduled to become effective on March 3, 1990, are filed as a mid-course correction, pursuant to waivers of Part 61 of the Commission's Rules, 47 C.F.R. Part 61.[1] In supplemental filings on February 15 and 22, 1990, Centel states that it performs separations studies regularly, annually, and not in an effort to cure any specific defect in jurisdictional cost allocations or shortfall in allocations made to a particular jurisdiction. A second basis of Centel's rate increase is a one-time catastrophic loss due to the effects of Hurricane Hugo. The filing is opposed by MCI Communications Corporation (MCI).

2. In its petition to reject, MCI asserts that Centel has not justified a rate increase. MCI states that Centel has not experienced increased costs, but simply suffers from inefficiency in its business operations. MCI Petition at 2-3. MCI also protests Centel's inclusion of one-time catastrophic expense associated with Hurricane Hugo. *Id.* at 4-5.

3. Centel replies, defending its business practices and planning, and stating that its accounting of one-time expenses associated with Hurricane Hugo is proper and in accord with Commission practice. Centel Reply at 1-3.

4. MCI has provided no compelling argument that Centel's proposed tariff revisions are so patently unlawful as to require rejection, and we conclude that no suspension or investigation is warranted at this time.

5. Accordingly, IT IS ORDERED that the petition to reject or, in the alternative, suspend and investigate, filed by MCI Communications Corporation against Centel Telephone Company Tariff F.C.C. No. 1, Transmittal No. 132, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Centel's Transmittal No. 133 was filed simultaneously on November 16, 1989. Because Centel originally intended that Transmittal 132 would become effective on December 31, 1989, a day before the changes incorporated in the November 2, 1989, Tariff Update Format (TUF) filing, it submitted Transmittal 133 to incorporate the TUF changes into the Transmittal 132 rates. Thus, while the pleadings and discussion concern the showing made in Transmittal 132, it is actually the rates in Transmittal 133 as modified pursuant to Special Permission No. 90-136 that will become effective on March 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-1

In the Matter of

Local Exchange Carrier Access
Tariff Rate and Earnings Levels

MEMORANDUM OPINION AND ORDER

Adopted: February 21, 1990; Released: February 21, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On January 5, 1990, the Common Carrier Bureau (Bureau) released an Order To Show Cause in the above-captioned docket.[1] In that Order, we directed certain local exchange carriers (LECs) to reduce specified rates, or to show cause why we should not prescribe reduced rates.[2] The Ameritech Operating Companies (Ameritech); Centel Telephone Companies (Centel); Contel Corporation (Contel), GTE Service Corporation, GTE North, Inc., and GTE Northwest, Inc. (GTOC); New York Telephone Company (NYT); Pacific Bell; Southern New England Telephone (SNET), Southwestern Bell Telephone (SWB); and United Telephone Company of Pennsylvania (United of Pennsylvania), United Telephone Company of Indiana (United of Indiana), United Telephone Company of Ohio (United of Ohio), United Telephone System-Midwest Group (United-Midwest) (together, United) submitted answers instead of (or in addition to) rate reductions. Ad Hoc Telecommunications Users Committee (Ad Hoc) and MCI Communications Corporation (MCI) filed oppositions.[3] Replies were filed by Ameritech, Centel, GTOC, NYT, SNET, and United. This Order examines the sufficiency of most of the answers.[4]

II. BACKGROUND

2. We have described the background of this Show Cause proceeding and the exercise of Section 205 prescription powers to require prospective rate reductions to avoid or alleviate violations of rate of return prescriptions in paragraphs 2-8 of the *Supplemental Order To Show Cause*. That discussion is also applicable to this Order.

III. PLEADINGS

Answers

3. Ameritech argues in its answer that it need not reduce its rates for Special Access, as significant changes in Special Access will keep Ameritech from overearning. Ameritech argues that the six months' data upon which the Order was based are not reflective of Ameritech's Special Access earnings for the tariff period, April 1989 through June 1990. Ameritech Answer at 3. Ameritech notes that it reduced its Special Access rates in September 1989 and again in November 1989, and that these reductions are not reflected in the earnings data cited by the Bureau. *Id.* at 5-6. Further, Ameritech asserts, the fact that it has been unable, since November 1989, to offer new DS3 offerings, but that this moratorium will end with the scheduled February effectiveness of its Transmittal 401, will impact Ameritech's Special Access earnings. Ameritech expects that other changes in its Special Access offerings and structures will also have a negative impact on Special Access earnings during the April through June 1990 access period.

4. Ameritech argues further that the *Order To Show Cause* is inconsistent with the Commission's Rules and decisions, with the Communications Act, and with the holding of the Court of Appeals in *AT & T v. FCC*. Ameritech asserts that the *Order To Show Cause*, in evaluating rates based on six months' data, contradicts Part 65 of the Commission's Rules and Commission decisions based upon those rules, which adopt a two-year period for reviewing annual earnings levels.[5] Ameritech avers further that the *Order To Show Cause* is inconsistent with Section 205(a) of the Communications Act, in that the Order proposes to prescribe rates but does not provide the necessary procedural steps. Ameritech Answer at 12-13 (citing Section 205(a) of the Communications Act, 47 U.S.C. § 205(a)). Finally, Ameritech contends that the *Order To Show Cause*, in applying the authorized rate of return per category rather than across interstate access, is contrary to the holding in *AT & T v. FCC*. *Id.* at 14-16.

5. Centel argues that Centel-Nevada should not be required to reduce its Special Access rates because, contrary to the Bureau's findings, Centel-Nevada Special Access is earning less than the authorized rate of return. Centel explains that the discrepancy is due to the fact that its FCC Forms 492 do not accurately reflect Centel-Nevada's level of earnings because of their reliance on outdated cost study and operating budget data. Centel Answer at 2-3. When the updated data are used, as they are in an updated Form 492 that Centel attaches as Exhibit B, it is clear that Centel is underearning significantly in the Special Access category, Centel argues. *Id.* at 3-4.

6. Contel has filed an answer stating that no Special Access rate reductions are justified for Contel of California or Contel of the Northwest, since both companies are earning below the authorized rate of return, and their Special Access rates in effect as of January 1 are designed to achieve no more than the authorized rate. Contel Answer at 1-2. Contel cites its updated Form 492, filed in November 1989, in stating that both companies are earning just under 11 percent in the Special Access category. *Id.* at 2. Contel notes that its new rates, filed in Transmittal No. 47 in November 1989 and effective January 1, 1990, are designed to allow Contel to recover the authorized rate of return for Special Access for the remainder of the access period. *Id.* at 3.

7. GTOC has submitted Transmittal No. 566, reducing Special Access rates for GTOC of Illinois, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin, and Northwest.[6] GTOC has also filed an Answer generally challenging the validity of the *Order To Show Cause*. GTOC opposes the Bureau's use of per-category earning levels, asserting that the Commission may monitor a carrier's rate of return only on an overall rate of return basis by filing company. GTOC Answer at 3-4 (citing *AT & T v. FCC*). GTOC

argues further that the Bureau should allow rate increases on the same basis as the ordered rate reductions. *Id.* at 5. GTOC states that the *Order To Show Cause* does not permit rate increases on the same basis as reductions, with the result that carriers will be forced to underearn. Finally, GTOC states that its special access rate reductions, filed in Transmittal 566, were scheduled to be filed in February anyway, and should not be taken as indicative of GTOC's acquiescence in the Bureau's *Order To Show Cause*.

8. Nevada has filed Transmittal No. 96, and states therein that this transmittal reduces its Traffic Sensitive (TS) Switched Access rates in accordance with the requirements of the *Order To Show Cause*. Nevada makes no reductions in its Common Line (CL) or Special Access rates. Although Nevada did not file an answer, the Nevada Transmittal No. 96 description and justification (D&J) states that it includes one-time expenses of $4 million and $0.4 million for its early retirement option (ERO) and post-retirement benefits program, respectively. Nevada also includes extra revenues of $1.1 million from a now-defunct meet point billing (MPB) arrangement from autumn 1989.

9. NYT declines to file rate reductions for Switched TS because, it argues, it has not overearned, and will not overearn, on total interstate access. NYT Answer at 2. If NYT were to reduce TS rates without increasing rates in other categories, it states, it would face underearning for the period. *Id.* NYT proceeds to make a showing of overall interstate earnings of less than 12 percent for the current access period, and states that underearnings in some categories offset overearning in the TS Switched category. *Id.* at 3-7. NYT argues that Commission precedent does not require carriers that are earning 12 percent or less on a total interstate basis to file mid-course corrections, and that any change in that policy requires "fair notice to the carriers." *Id.* at 7. Further, NYT notes, any TS Switched rate reduction prescribed by the Bureau would guarantee that NYT would underearn in interstate access overall. *Id.* at 10. NYT suggests that the Bureau prescribe rate increases as well as decreases, or grant special tariff permission to implement increases on the same schedule (*i.e.*, on less than statutory notice) as the ordered decreases. *Id.* at 12.

10. United has submitted an answer on behalf of United of Pennsylvania, United of Indiana, United of Ohio, and United Midwest Group, and also has filed two tariff transmittals. Each of the United companies except Pennsylvania has filed rate reductions in response to the *Order To Show Cause*. United Transmittal No. 251 reduces TS Switched rates for United of Ohio and United Midwest Group, and reduces Special Access rates for United of Indiana. United of Pennsylvania submits that no rate reductions are required, since it is not overearning. United Answer at 4. United states that United of Pennsylvania's TS switched rate of return for January through September 1989 is 11.78 percent, based on a cumulative computation of the data contained in United's quarterly earning reports (Form 492). *Id.* at 5.

Oppositions

11. MCI challenges Ameritech's answer as failing to provide persuasive evidence contradicting the Bureau's projection of overearning. MCI Opposition to Ameritech Answer, at 2. MCI states that Ameritech's claimed voluntary reductions of $7.6 million in Special Access rates are inadequate to forestall overearning, since Ameritech's 14.27 percent rate of return equates to $18 million extra earnings. *Id.* at 3-4. MCI disputes Ameritech's assertion that Ameritech's regionalization of Special Access rates will have any impact on Ameritech's Special Access earnings, stating that Ameritech declared in its D&J for that revision that it expected this change to be revenue neutral. *Id.* at 4. Any impact that might result, MCI argues, is purely speculative, and might as likely result in increasing as in decreasing Ameritech's Special Access revenues. *Id.* Further, MCI challenges Ameritech's claim that its new DS3 rates and revenues will have a significant effect on its Special Access revenues. *Id.* at 5.

12. MCI also challenges Ameritech's assertion that the *Order To Show Cause* is legally deficient and should be dismissed. *Id.* MCI argues that the *Order To Show Cause* requires an explanation, and does not prescribe rates, so that Ameritech's argument that the Order is inconsistent with Section 205 of the Communications Act is inapt. *Id.* at 5-6. MCI also contends that Ameritech is mistaken in asserting that the Order is in conflict with the two-year monitoring period provision of Part 65 of the Commission's Rules, since that provision, according to MCI, concerns determinations regarding the calculation of the maximum rate of return and of necessary refunds. *Id.* at 7. Finally, MCI disputes Ameritech's assertion that the *Order To Show Cause* exceeds Commission authority as established in *AT & T v. FCC*, since that case overturned only the automatic refund provisions of Part 65, but left the Commission's rate of return prescription authority standing. *Id.* at 8.

13. MCI's opposition to Centel's answer asserts that Centel does not provide adequate cost support, and relies on a not-yet-effective operating budget, in seeking to justify its Special Access earnings for Nevada. MCI Opposition to Centel Answer, at 1. MCI questions the validity and reasonableness of Centel's relying on a deferred tariff as justification for changing its Form 492 reports, which in turn support its Special Access showing. *Id.* at 2. Further, MCI argues, Centel should offer, but did not, detailed explanations of the discrepancies between its old Form 492 reports, showing Special Access earnings of 17.12 percent, and its new ones, showing Special Access earnings below the authorized 12 percent level. *Id.* at 3. Finally, MCI challenges Centel's use of new Form 492 reports that are based on unspecified "updated factors and allocators." *Id.* (citing Centel Answer at 7).

14. Ad Hoc and MCI oppose GTOC's assertion that earnings should be reviewed on a total interstate and company-by-company basis. Ad Hoc Opposition at 2; MCI Opposition to GTOC Answer, at 2-3 (citing *MCI Complaint Order*). Ad Hoc argues that the Commission has repeatedly and unambiguously ruled that rate of return prescriptions will be enforced on a category basis, at the same level of aggregation as the carrier's tariffs. Ad Hoc Opposition at 3-5 (quoting *MCI Complaint Order*). MCI asserts that segregation of access categories and segregation of jurisdictions are two of the strongest safeguards against the possibility of LEC cross-subsidization. MCI Opposition at 2-4. Ad Hoc also disputes assertions that the *Order To Show Cause* is confiscatory in result, and notes that the carriers have had and continue to have the right to file rate increases as necessary to achieve the authorized earning levels. Ad Hoc Opposition at 6. Ad Hoc also argues that the Bureau's use of an overall interstate earn-

ing level on a one-time, expedited basis in the *1988 Order To Show Cause* does not constitute a policy change. *Id.* at 7.

15. Ad Hoc challenges NYT's argument that only overall interstate rate of return should be examined. Ad Hoc Opposition at 2-4. MCI too opposes NYT's assertion that only overall interstate overearning can merit a prescription of reduced rates. MCI Opposition to NYT Answer, at 3 (citing *MCI Complaint Order).* MCI further disputes NYT's assertion that NYT had no notice that it should correct any earnings imbalances by submitting mid-course corrections to increase rates in other categories. *Id.* at 4. Ad Hoc opposes NYT's suggestions that the Bureau prescribe rate increases as well as decreases, or waive Section 61.38 cost support requirements for rate increases. Ad Hoc Opposition at 9. Ad Hoc asserts that NYT is effectively seeking a guaranteed rate of return, and that grant of the relief NYT requests is unnecessary and would be unfair. *Id.* at 9. MCI adds that the Commission has stated that "carriers assume the risk of both losses for services they underprice and the prospect of returning amounts realized through rates that are unjustly and unreasonably high." MCI Opposition at 4-5 (quoting *MCI Complaint Order* at para. 58).

Replies

16. Ameritech replies to MCI's opposition by reiterating the assertions made in its answer and stating that MCI has not disproved them. Ameritech Reply at 1-4. Ameritech asserts again that it cannot estimate the impact of the various changes that are recently effective or due to become effective soon, but reiterates its view that a prescribed rate reduction is unwarranted and premature. *Id.* at 5-6. Ameritech also repeats its arguments regarding the legality of the proposed prescriptions, *id.* at 6-11, and reemphasizes the importance it attaches to the fact that its overall interstate earnings are within the authorized 12 percent range. *Id.* at 9.

17. Centel replies to MCI's opposition, which stated that Centel provided inadequate cost support and relies on an operating budget that was included in Centel's mid-course correction which has been deferred, by stating that neither argument is true and that neither, in any case, provides a basis for a prescription. Centel Reply at 2. Centel argues that it was not bound, by the Commission's Rules or by the *Order To Show Cause*, to make a full Section 61.38 showing in its answer. *Id.* at 3. Centel also states that, contrary to MCI's assertion, Centel did not use an updated operating budget to calculate its revised Form 492 report (attached to Centel's answer as Exhibit B).[7] Instead, Centel argues, Centel filed in November its Transmittal No. 132, proposing Special Access rate increases for Centel-Nevada based on Centel-Nevada's use of an updated (1988) cost study and an updated (1989) operating budget. *Id.* at 4.

18. Centel asserts that its Form 492 was revised to reflect the same factors as it used in its mid-course filing, and actual booked costs for calendar year 1989, but that MCI is incorrect in asserting that Centel used an updated operating budget to calculate its Form 492. Centel argues that separations studies can be introduced at any time, and that its use of updated studies and actual booked costs does not violate any statute, rule, or policy. *Id.* at 5. Finally, Centel argues that MCI's reference to a cumulative rate of return of 17.12 percent for Centel's second and third quarters is objectionable because this figure does not reflect the revenue and cost changes which resulted from the use of updated jurisdictional studies.

19. NYT replies to the Ad Hoc and MCI oppositions by stating that neither has disputed NYT's assertion that it has earned less than 12 percent in overall interstate access services. NYT Reply at 1. NYT argues that different standards apply in rate retargeting cases, such as the instant proceeding, than apply in refund cases, such as those cited by Ad Hoc and MCI. *Id.* at 2. NYT argues that in rate retargeting cases, the Commission has both the authority and the obligation to ensure that carriers have a reasonable opportunity to earn the authorized rate of return for the future period. *Id.* NYT asserts that neither opposition disputed the fact that if the Commission prescribed reductions without concurrently prescribing increases, NYT could not earn the authorized rate of return. *Id.* at 2-3. NYT states that the *Order To Show Cause* creates a double standard by providing for rate reductions on an expedited basis and with simplified documentation, but by allowing rate increases only on statutory notice and with full evidentiary support. *Id.* at 4. NYT states that it has demonstrated that there is no serious risk of cross-subsidization under its current rates. *Id.* at 5.

IV. DISCUSSION

20. Some carrier answers provide, or attempt to provide, reasons for concluding that the current rates are not likely to result in overearning if those rates remain in effect. Other carriers do not attempt to demonstrate that current rates will not produce overearnings, but nonetheless contend that we should not or cannot prescribe rate reductions at this time. The Ameritech answer both disputes our authority to remedy overearnings in the manner proposed in the *Order To Show Cause* and presents its reasons for concluding that the current Ameritech rates will not produce overearnings. We first examine arguments relating to our authority to prescribe reductions and then examine arguments relating to the likelihood that particular carrier rates will produce overearnings.

Authority To Prescribe

21. Several parties argue that the *Order To Show Cause* should be dismissed, overturned, or reconsidered, on the grounds that the Bureau exceeded our authority, that this proceeding is procedurally insufficient, or that the *Order To Show Cause* is inconsistent with Commission rules and policy, with the Communications Act, or with the Court of Appeals decision in *AT & T v. FCC*. We reject these arguments.

22. Ameritech argues that the *Order To Show Cause* is inconsistent with Section 205(a) of the Communications Act, 47 U.S.C. § 205(a), because that Section requires procedural steps not followed here. *See* Ameritech Answer at 12-13. Specifically, Ameritech interprets this Section of the Act as providing additional procedural steps before a prescription of rates may occur. Ameritech apparently views the Act's provision that this procedure must begin with "an order for investigation and hearing made by the Commission," as requiring a Section 204(a) investigation before a prescription can be imposed. In fact, no such requirement is present in this Section or any other provision of the Act. Section 205(a) reads, in relevant part:

> Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe . . . .

47 U.S.C. § 205(a).

23. Terms such as "order for investigation and hearing" are not limited to Section 204(a) investigations of new tariffs. The Commission can initiate a proceeding to determine the lawfulness of rates at any time. *See* 47 U.S.C. § 403. The Commission, or this Bureau based on authority delegated by the Commission, can exercise the Section 205 prescription power at the end of such proceeding if the rate is or will be unlawful. Ameritech, stating that "in this case there has been no investigation or hearing," interprets the *Order To Show Cause*, with its requirement of rate reductions or explanation and justification of existing rates, as in fact a prescription. Ameritech Answer at 14. Ameritech states that the Bureau has "skipped" mandatory procedural safeguards and has already determined that existing rates are not just and reasonable. *Id.* This is not the case.

24. The Commission, through delegated authority to the Bureau, has here correctly determined to investigate certain rates, and has, through the *Order To Show Cause*, provided the carriers with a full opportunity for hearing. The *Order To Show Cause* does not, as Ameritech suggests, make a final determination that Ameritech's, or any other carrier's, rates are unjust or unreasonable, but states that, *absent further justification or explanation* the rates are, on their face, unlawful. In fact, the *Order To Show Cause* establishes the procedural guidelines and opportunity for Ameritech and other carriers to provide support and justification that will enable us to determine the lawfulness of the rates in question. We are rendering a determination in the instant Order as to the lawfulness of the rates under consideration in this proceeding; our determination is based upon the record,[8] including the filings in this proceeding, which constitute the carriers' full opportunity for hearing.

25. Several carriers argue that the Bureau's reliance on data from two quarters is misplaced, as Part 65 requires the use of a two-year monitoring period. *See, e.g.*, Ameritech Answer at 3, 9-11. We reject this argument because Part 65, specifically Sections 65.700 *et seq.*, concerns refunds, not prospective adjustments to retarget the authorized rate of return, and is thus irrelevant here. The instant proceeding is undertaken under Part 69 of the Rules, which require exchange carriers to target access element rates accurately, and pursuant to the Commission's *Tariff Filing Deferral Order*, which directed the Bureau to "make any necessary adjustments" to ensure that the LECs retarget their rates with sufficient accuracy and frequency to overcome the increased risk that these rates would overearn.

26. A further argument centers on our focus on category earnings, rather than overall interstate rate of return. This argument has two apparent bases -- an assertion that the Commission has no right to consider category earnings, but must evaluate rate of return only on an overall interstate basis, and a fairness argument, that the Bureau's Order establishes a fundamental unfairness in its requirement of category rate reductions.

27. The first prong of the argument against category rate of return evaluations states that the *Order To Show Cause* is inconsistent with the determinations of the Court of Appeals in *AT & T v. FCC*. *See, e.g.*, Ameritech Answer at 14-19; NYT Answer and Reply, *passim;* GTOC Answer at 3-4. This argument asserts that the Court, in finding the Commission's automatic refund requirement arbitrary and capricious, also rejected the Commission's policy of reviewing carriers' earning levels by designated access categories, to wit, Switched Traffic Sensitive, Common Line, and Special Access. Nothing in that decision supports this interpretation, however. The Court rejected the automatic nature of the Commission's refund provisions, but specifically reaffirmed the authority of the Commission to review and regulate rates, and to order refunds or rate revisions. *See AT & T v. FCC*, 836 F2d at 1392.[9]

28. The Part 69 targeting requirements were, of course, adopted over two years before the Part 65 enforcement rules were adopted. The Part 69 rules were affirmed in relevant part by a different panel of the same Court. In these circumstances, *AT & T v. FCC* could not be construed to relieve carriers from any of their Part 69 obligations.

29. The second prong of the argument contends that the *Order To Show Cause* is unfair and sets a double standard by establishing a streamlined filing procedure for rate reductions without making a similarly streamlined procedure available for rate increases. *See, e.g.*, NYT Answer at 10-12. Parties making this argument assert that the *Order To Show Cause*, in directing carriers to file rate reductions in some categories and forbidding them to file any rate increases, forces carriers to underearn for interstate access overall. *See id.*

30. These parties misinterpret the *Order To Show Cause*. Our major concern in adopting the *Order To Show Cause* was that we believed that certain carriers were earning significant amounts in excess of the authorized rate of return. We accordingly provided an expeditious means of correcting unreasonable rates. We established an expedited filing schedule for such corrections. We applied this expedited schedule only to those rates that specifically concerned us in the confines of this proceeding, and not to carrier rates generally.[10] To that end, we published with our Order a list of the carriers whose rates appeared to require reductions. While we did not invite carriers to use the expedited filing schedule for other tariff revisions, we did not by any means forbid them to file rate increases, nor in any way indicate that they were precluded from requesting notice or cost support waivers for other mid-course filings. In fact, one carrier applied for special permission to effect a shorter-than-statutory notice period for a tariff increase filing; United was granted special permission to file its Transmittal No. 252 on short notice, and that tariff increase has become effective. *See United Order*. Any carrier directed in the *Order To Show Cause* to reduce a rate could similarly have requested special permission to file a concomitant rate increase.[11] Our decision whether to grant any such special permission request, of course, would rest on the merits of the particular case. Moreover, granting short notice does not bind the Commission to complete the tariff review process within the shortened period; the Commission would always re-

serve the right to defer the pending tariff for the full statutory notice period, if such a deferral became necessary to enable sufficient review and analysis of the tariff, supporting materials, and pleadings.

31. Second, and more fundamentally, we dispute the underlying premise of the parties arguing that our category rate of return focus produces an unconstitutionally confiscatory result. The implication of the parties' claim here is that they are entitled, as a constitutional matter, to charge their customers excessive rates for one category of service as long as these earnings are balanced by a deficiency of earnings in another category; in short, that they are entitled to cross-subsidize. The prevention of cross-subsidization has long been recognized as a lawful objective of rate regulation. Carriers can achieve a reasonable return without violating Section 202 of the Act.

32. We note also that the Commission has stated its authority to regulate and to prescribe on a category level on a number of occasions, beginning in 1985, and that the Court has affirmed this authority.[12] With regard to the possibility of the carrier's suffering loss following a prescription by the Commission, the Commission has recently considered this matter, and concluded that, far from creating a "confiscatory" result, the focus of rate of return inquiries is properly and necessarily on the carrier, and that the carrier, not the customer, must bear the risk of loss in such cases:

> [T]he carrier retains substantial flexibility in formulating rates. Carriers are permitted to make mid-course corrections if their actual return deviates from the authorized return. If actual earnings are higher than the authorized return, a carrier can file reductions and thereby avoid the risk of being ordered to pay damages. If actual earnings are below the authorized return, a carrier can file rate increases. . . . As a general matter, it would be inequitable to permit [exchange carriers], who were in the best position to set their rates at lawful levels in the first place, and who later had opportunities to correct those rates, to avoid responsibility for those unlawful rates, at the expense of their customers.

MCI Complaint Order at para. 59. We accordingly conclude that the prescription procedure described in the *Order To Show Cause* and adopted in this Order is fully consistent with Commission precedent, and that carrier claims that we should base such decisions on a carrier's overall interstate rate of return are not consistent with relevant Commission precedent.

33. The responses of NYT and the GTOC companies that declined to reduce rates are based exclusively upon the arguments we have rejected. We accordingly prescribe reductions for those companies.

34. Our calculations indicate that the current NYT rates in the TS Switched Access category would produce about $46.5 million in excess earnings on an annualized basis. That computation is based upon earnings reported by NYT, and does not reflect the effect of accounting adjustments described in the Commission's recent notice of apparent liability.[13] A larger reduction would be required to reflect those adjustments. We can prescribe a reduction in rates without insulating the carrier from future liability if such reductions are insufficient because Section 205 of the Act, 47 U.S.C. § 205, empowers the Commission to prescribe "the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed . . . ." We find that the reductions required by this Order, including reductions by carriers other than NYT, will produce rates that will not exceed the just and reasonable rate, and we are accordingly excerising our power to prescribe a maximum. If greater reductions are necessary to achieve just and reasonable rates, carriers should make such reductions. We require NYT to adjust its TS Switched Access rates for the period from March 1, 1990, through June 30, 1990.

35. Our calculations indicate that GTOC North (Indiana) Special Access rates must be reduced by $167,000 on an annualized basis, GTOC North (Pennsylvania) Special Access rates must be reduced by $711,000 on an annualized basis, and GTE Northwest Special Access rates must be reduced by $648,000 on an annualized basis. We require those carriers to implement such reductions for the period from March 1, 1990, through June 30, 1990.

Likelihood of Overearnings

36. Centel-Nevada, Contel (California and Midwest) and United (Pennsylvania) have all provided revised earnings reports for the April-September 1989 period which show that earnings in the relevant categories did not exceed 12.4 percent during that period. We have no reason to believe that the revised "actuals" are inaccurate, and accordingly there is no reason to believe the relevant category earnings will be excessive. We do not prescribe rate reductions for those carriers.

37. Nevada Bell apparently contends that the net effect of expenses and revenues that it did not anticipate when it filed its annual access tariffs will offset overearnings that would otherwise result from its current Special Access and Common Line rates.[14] Nevada Bell did not provide any allocation of these expenses or revenues among categories and thus has not demonstrated that it is not likely to overearn in those categories. Our computations indicate that the current rates would produce $1.5 million in excess Common Line earnings and $58,000 in excess Special Access earnings on an annualized basis. We are accordingly directing Nevada Bell to reduce Carrier Common Line and Special Access rates for the period from March 1, 1990, through June 30, 1990, to produce such a reduction.

38. Ameritech says that the *Order To Show Cause* failed to note that September and November 1989 revisions in Ameritech Special Access rates will reduce its Special Access revenues by approximately $7.7 million. Our analysis of Ameritech's second and third quarter earnings indicates that an additional reduction of $9.64 million would be required to avoid overearnings.

39. Ameritech also submits that it had a four-month "moratorium" on new DS3 service, and that this resulted in substantial reduction of revenues after the second and third quarters of 1989. Ameritech has not quantified its loss from the four month delay in any of its pleadings in this proceeding. In its D&J for regionalization of Special Access rates in Transmittal No. 373, dated September 29, 1989, Ameritech estimated that its DS3 revenues will decline by $4.3 million because existing customers will move to general tariff rates if they are lower than existing rates, or will continue to use existing rates if they are lower than tariff rates.[15] We do not accept Ameritech's

assertion that this transition period loss can account for such a revenue loss, as it appears from Ameritech's own records and filings in the DS3 docket that only a small number of Ameritech's customers are in a position to make such a decision and to impose this loss on Ameritech. In any case, Ameritech has not supported in any of its pleadings here the generalized assertions of probable loss; the mere assigning of a monetary amount, without calculation or justification, is not sufficient. We believe Ameritech would have presented a detailed showing if this claim were well founded.

40. We also find less than compelling Ameritech's assertions of the unknown negative impact of various Special Access rate and structure changes. Ameritech argues, for example, that its regionalization of rates may produce a decline in demand, and, consequently, in revenues. We note, however, that at the time Ameritech proposed this change and we allowed it to become effective, Ameritech stated, in its Transmittal No. 373, that the change would be revenue-neutral and would produce no change in demand.[16] While Ameritech argues that further reductions in revenue may result from regionalization of its Special Access rates, it is unable to quantify the effect. It seems probable that these changes, like the DS3 transition, may have some impact on Ameritech's revenues in the coming six months, but we are dubious that these impacts will offset the approximately $10 million excess that we calculate remains after inclusion of Ameritech's September and November reductions. In fact, these changes could cause Ameritech's revenues to increase rather than decrease; Ameritech has presented no persuasive evidence either way.

41. While we cannot readily calculate the impact of such changes, we find it unreasonable for Ameritech to argue that, based on such speculative factors, it should be allowed to retain current rates. Accordingly, Ameritech is directed to reduce its Special Access rates to account for the remaining $9.64 million overearning calculated above. Ameritech is directed to file new rates that are no higher than this level, for the period from March 1, 1990, through June 30, 1990, to produce such a reduction.

V. ORDERING CLAUSES

42. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 205, that Ameritech Operating Company SHALL REDUCE Special Access rates to levels at or below the maximum permissible just and reasonable rate levels indicated here, and shall issue a tariff supplement in compliance with this Order, reflecting reductions indicated, no later than February 26, 1990, with a scheduled effective date of March 1, 1990.

43. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 205, that GTE Operating Company SHALL REDUCE Special Access rates for Indiana, Pennsylvania, and Northwest, to levels at or below the maximum permissible just and reasonable rate levels indicated here, and shall issue a tariff supplement in compliance with this Order, reflecting reductions indicated, no later than February 26, 1990, with a scheduled effective date of March 1, 1990.

44. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 205, that Nevada Bell SHALL REDUCE Special Access and Common Line rates to levels at or below the maximum permissible just and reasonable rate levels indicated here, and shall issue a tariff supplement in compliance with this Order, reflecting reductions indicated, no later than February 26, 1990, with a scheduled effective date of March 1, 1990.

45. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 205, that New York Telephone SHALL REDUCE Switched Access rates to levels at or below the maximum permissible just and reasonable rate levels indicated here, and shall issue a tariff supplement in compliance with this Order, reflecting reductions indicated, no later than February 26, 1990, with a scheduled effective date of March 1, 1990.

46. IT IS FURTHER ORDERED that Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, ARE WAIVED for the purpose of compliance with this Order and Special Permission No. 90-161 IS ASSIGNED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

RATE OF RETURN WORKSHEET
COMPANIES IDENTIFIED IN THE SHOW CAUSE ORDER
PRESCRIBED REDUCTIONS
(000)

COSA	CARRIER	2Q ANI	3Q ANI	AVG ANI (A+B)/2	2Q INC	3Q INC	AVG ANN INC (D+E)*2	ANN ROR F/C	AUTH INC. C*12%	DIFF G-H	EXCESS INC. ADJ FOR FIT I*1.515152	LEC PROPOSED REDUCTIONS	DIFF J-K	FCC PRESCRIBED REDUCTIONS
						COMMON LINE ACCESS								
PTNV	NEVADA BELL	54,577	54,031	54,304	1,770	1,986	7,511	13.83%	6,516	995	1,507	0	1,507	1,507
SNCT	SNET	199,785	206,042	202,914	6,708	6,840	27,096	13.35%	24,350	2,746	4,161	0	4,161	0
	TOTAL COMMON LINE ACCESS:										$5,668	$0	$5,668	$1,507
						SWITCHED ACCESS								
NYNY	NEW YORK TEL	1,394,794	1,404,369	1,399,582	49,731	49,580	198,622	14.19%	167,950	30,672	46,473	0	46,473	46,452
PTNV	NEVADA BELL	31,637	31,635	31,636	952	1,381	4,666	14.75%	3,796	870	1,318	1,007	311	0
UTOH	UNITED OHIO	38,726	37,244	37,985	1,412	1,192	5,208	13.71%	4,558	650	985	1,420	(435)	0
UTPA	UNITED PENNSYLVANIA	18,556	20,167	19,362	585	657	2,484	12.83%	2,323	161	243	0	243	0
UTNW	UNITED MIDWEST	47,053	48,305	47,679	1,714	2,009	7,446	15.62%	5,721	1,725	2,613	2,612	1	0
	TOTAL TS SWITCHED ACCESS:										$51,632	$5,039	$46,593	$46,452
						SPECIAL ACCESS								
AMTR	AMERITECH	508,846	492,931	500,889	17,848	17,895	71,486	14.27%	60,107	11,379	17,241	0	17,241	9,641
PTNV	NEVADA BELL	7,920	7,906	7,913	236	258	988	12.49%	950	38	58	0	58	58
CENV	CENTEL NEVADA	6,570	6,611	6,591	318	245	1,127	17.09%	791	336	509	0	509	0
COCA	CONTEL CALIFORNIA	5,853	6,004	5,929	97	229	652	11.00%	711	(59)	(90)	0	(90)	0
CONW	CONTEL OF THE NORTHWEST	1,211	1,243	1,227	42	23	130	10.59%	147	(17)	(26)	0	(26)	0
GTIL	GTE NORTH - ILLINOIS	6,604	6,486	6,545	424	389	1,625	24.83%	785	840	1,273	1,315	(42)	0
GTIN	GTE NORTH - INDIANA	20,490	20,710	20,600	407	884	2,582	12.54%	2,472	110	167	0	167	167
GTMO	GTE NORTH - MISSOURI	2,839	2,908	2,874	101	96	395	13.74%	345	50	76	118	(42)	0
GTPA	GTE NORTH - PENNSYLVANIA	7,658	7,879	7,769	333	368	1,401	18.04%	932	469	711	0	711	711
GTWI	GTE NORTH - WISCONSIN	4,617	4,804	4,711	209	199	816	17.31%	565	250	379	704	(325)	0
GTNB	GTE NORTHWEST - WA/OR/CA(WC)	23,380	24,219	23,800	795	847	3,284	13.80%	2,856	428	648	0	648	648
UTIN	UNITED INDIANA	5,159	4,977	5,068	161	154	631	12.44%	608	23	34	43	(9)	0
SNCT	SNET	64,547	63,392	63,970	2,291	2,351	9,285	14.51%	7,676	1,608	2,437	0	2,437	0
	TOTAL SPECIAL ACCESS:										$23,417	$2,180	$21,237	$11,225

FOOTNOTES

[1] Local Exchange Carrier Access Tariff Rate and Earnings Levels, CC Docket No. 90-1, Order To Show Cause, DA 90-11, released Jan. 5, 1990 (*Order To Show Cause*).

[2] Attachment A shows the attachment from the *Order To Show Cause* specifying carriers that are required to file reduced rates or answers. Centel of Texas and Lincoln Telephone have been deleted from the list of carriers directed to reduce their common line rates. *See* Local Exchange Carrier Access Tariff Rate and Earnings Levels, CC Docket No. 90-1, DA 90-226, released Feb. 15, 1990 (*Supplemental Order To Show Cause*) at para. 1 n.2.

[3] Ad Hoc opposes the answers of NYT and GTOC. MCI opposes the answers of Ameritech, Centel, GTOC, NYT, and SNET.

[4] We will determine the lawfulness of SNET rates in a subsequent Order. We do not consider the Pacific and Southwestern answers because those carriers filed rate reductions in all relevant categories. We did not intend to require or invite answers from carriers that elect to file reductions for all relevant categories. Those filings, as well as some GTOC rates (GTE-Iowa, GTE-Michigan, GTE-Minnesota, and GTE-Ohio) are considered in the *Supplemental Order To Show Cause*. Rate increases filed by United were considered in a separate Order released February 14, 1990. *See* United Telephone Company, Tariff F.C.C. No. 1, Transmittal No. 252, Order, DA 90-224, released Feb. 14, 1990 (*United Order*).

[5] Ameritech Answer at 9-11 (citing Interstate Rate of Return for AT&T and Local Exchange Carriers, CC Docket No. 84-800, Memorandum Opinion and Order, 53 R.R.2d 1647, released Sept. 30, 1985, at para. 15; *MCI Complaint Order* at n.69; MCI Telecommunications v. Southern Bell Telephone, E-87-41, E-89-35, released Nov. 16, 1989).

[6] GTOC rate reductions for Iowa, Michigan, Minnesota, and Ohio are considered in the *Supplemental Order To Show Cause*. The remaining GTOC rates are considered in this Order.

[7] Centel's answer included as Exhibit A its third quarter 1989 Form 492. Exhibit B is an updated version of that Form, filed simultaneously with the answer, that covers the same period as the Form 492 in Exhibit A, but reflects updated separations study factors and Part 69 allocation factors. Centel's Exhibit C is a Form 492 for the second and third quarters of 1989 (the first two quarters of the current access period), and includes the same updates as Exhibit B.

[8] For this purpose, the record includes the earnings reports cited in the *Order To Show Cause*.

[9] A related argument is made by GTOC, which asserts that its rates should be evaluated on a company-wide basis, not by study area. We reject this argument at well. As the Commission noted in a recent Order, each carrier chooses the level of aggregation it will use for tariff filings, and that level will also be used by the Commission in evaluating the tariff, including earning levels. AT&T v. Northwestern Bell Telphone Company, File No. E-88-21, Memorandum Opinion and Order, FCC 89-343, released Jan. 9, 1990, at para. 47.

[10] We note that many carriers had taken the opportunity to submit mid-course corrections and Tariff Update Format (TUF) filings, all targeted for January 1, 1990, effectiveness. We concentrated, in the *Order To Show Cause*, on those rates that had not been so adjusted and that were, on their face, excessive, and thus appeared to require reduction. We did not conceive of this proceeding as a generalized tariff filing opportunity.

[11] As NYT notes, previous Commission Orders have approved mid-course tariff filings by the LECs, on short notice and with simplified documentation, that both increased and reduced access charges to target each category to the authorized rate of return. NYT Answer at 10 & n.16.

[12] *See Supplemental Order To Show Cause*, paras. 2-8.

[13] New York Telephone Co. and New England Telephone and Telegraph Co., Order To Show Cause and Notice of Apparent Liability for Forfeitures, FCC 90-57, released Feb. 9, 1990 (*MECO Order*). *See also* Arizona Grocery v. Atchison T.&S.F.R. Co., 284 U.S. 370 (1932).

[14] This claim should have been presented in an answer. We expected that carriers would file reduced rates *or* an answer for each category listed in the *Order To Show Cause*.

[15] *See* Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Memorandum Opinion and Order, 4 FCC Rcd 8634 (1989) *(DS3 Order)*. That Order directed affected LECs to file tariff revisions that would be effective in early March 1990 and that amend the terms of all currently effective fixed-term ICB contracts for DS3 and DS3-equivalent service to terminate one year from the effective date of the tariff revisions. DS3 *Order* at para. 79. Open-ended or month-to-month ICB arrangements must be converted to general rates immediately. *Id.* The Order also directs that LECs impose no termination liability charges or non-recurring charges. *Id.*

[16] *See* Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2, Transmittal No. 373, Order, DA 89-1641, released Dec. 20, 1989, at para. 4.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 0.461(g)
of the Commission's Rules

ORDER

Adopted: March 1, 1990; Released: March 8, 1990

By the Managing Director:

1. Section 0.461 of the Commission's rules deals with requests for inspection of materials not routinely available for public inspection. It has come to our attention that the second sentence in section 0.461(g) has been inadvertently omitted in the Code of Federal Regulations. Accordingly, section 0.461(g) of the Commission's rules is hereby amended to correct this omission.

2. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j) and section 0.231(d) of the Commission's Rules, IT IS ORDERED that section 0.461(g) of the Commission's Rules is amended as set forth in the Appendix effective upon publication in the Federal Register.[1]

FEDERAL COMMUNICATIONS COMMISSION

Andrew S. Fishel
Managing Director

APPENDIX

Part 0 of Title 47 of the C.F.R. is amended as follows:

1. The authority citation for Part 0 continues to read:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. 47 C.F.R. § 0.461(g) is revised to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(g) The custodian of the records will make every effort to act on the request within 10 working days after it is received by the FOIA Control Office. If it is not possible to locate the records and to determine whether they should be made available for inspection within 10 working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

* * * * *

FOOTNOTE

[1] Because this rule change is a matter of agency practice and procedure, a notice and comment proceeding is not required, 5 U.S.C. § 553(b)(A), and the rule change may be made effective upon publication in the Federal Register. *See* 5 U.S.C. § 553(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 8, 1990

BELLSOUTH CORPORATION FILES PETITION FOR DECLARATORY RULING RE: NXX CODES

BellSouth Corporation has filed a Petition for Declaratory Ruling that a refusal to assign "NXX Codes" under its delegated authority to administer the assignment of such codes according to the North American Numbering Plan, will not violate the Communications Act. Specifically, BellSouth asks for a finding that denial of TELECOM*USA's request for NXX code assignments, under particular facts and circumstances set forth in its petition would be reasonable, nondiscriminatory and consistent with the Communications Act. BellSouth stated that it has evaluated TELECOM*USA's request for NXX codes according to BellSouth's NXX Code Assignment Criteria and has preliminarily concluded that the request should be denied. BellSouth further stated that it applied the long-standing industry practice of assigning NXX codes only to local exchange carriers or similarly situated entities, unless a specific bona fide need for the NXX code assignment has been demonstrated.[1] BellSouth found that TELECOM*USA neither has the authority to offer local exchange-type services nor has demonstrated a specific bona fide need for the NXX code assignment. BellSouth maintained that it also considered the current acute scarcity of NXX codes in the BellSouth region and the public costs related to the premature exhaustion of numbering resources when evaluating TELECOM*USA's request. It is BellSouth's view that TELECOM*USA does not need the requested NXX codes and that there are other existing numbering arrangements available to TELECOM*USA. Pending a determination by the Commission, BellSouth will not provide TELECOM*USA with a final response. BellSouth urges the Commission to consider this petition and issue a ruling on an expedited basis. The question to be decided, therefore, is under what, if any, circumstances NXX code assignments should be made for other than local exchange type services.

Interested parties may file comments concerning the BellSouth Petition within 30 days of the release of this Public Notice. Reply comments should be filed within 15 days thereafter. All filings should refer to File No. ENF-90-06.

Copies of the petition and any subsequently filed documents in this matter may be obtained from International Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20036, (202) 857-3800. The BellSouth Petition and other documents will also be available for review and copying in Suite 6206, 2025 M Street, N.W., Washington, D.C. 20554.

For further information, contact either Roger J. Hertz or Kecia Boney at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] *In The Matter of Request For Declaratory Ruling Regarding The Refusal Of Alascom, Inc., To Assign NNX Codes to General Communications Inc.*, File No. ENF-87-12, *Memorandum Opinion and Order*, 3 FCC Rcd 700 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of the Application of

JACK G. HUBBARD File No. 5822-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
Peoria, Illinois

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Jack G. Hubbard (Hubbard) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the Peoria, Illinois area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) and UACC Midwest, Inc. (Midwest) filed post-lottery Petitions to Deny,[1] challenging the application. Hubbard filed separate Oppositions to the Petitions to Deny.

2. *Pleadings*. In their separate Petitions, Microband and Midwest allege that Hubbard, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for Peoria. Microband and Midwest contend that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Hubbard failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule. Midwest also contends that Hubbard has not adequately demonstrated his financial qualifications to be an MMDS licensee in violation of Section 21.17 of the Commission's Rules, 47 C.F.R. § 21.17.

3. In opposition to both the Microband and Midwest Petitions, Hubbard notes that neither Microband's nor Midwest's Petitions to Deny contain affidavits in support of their petitions nor offer any proof or substantive evidence to substantiate their allegations. Hubbard relies upon his sworn affidavit to support his assertion that he has not violated the real-party-in-interest and one-to-a-market rules. Responding to the allegation by Midwest that he failed to adequately demonstrate his financial qualifications to construct and operate the above-referenced MMDS station, Hubbard submits an updated financial statement.

4. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont)*; *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz)*.

5. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter cited as *Astroline)*. In the instant case, Microband and Midwest allege the apparent existence of real-party-in-interest rule and one-to-the-market rule violations. After consideration of Microband's and Midwest's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Hubbard failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

6. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence and facts offered in rebuttal). Here, petitioners' allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

7. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004, 7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's and Midwest's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed. However, it has been recognized that applications that are totally unrelated may be similar as a result of the coincidental use of common engineering and legal consultants.[7] *Thomas Glab*, 5 FCC Rcd 516 (Dom Fac. Div. 1990). In each of his Oppositions, Hubbard states in rebuttal:

> There were no agreements or understandings existent or under negotiation at the time of the filing of these applications which affected the ownership or control of the proposed facilities, or any right or interest therein by any person not a party to my application. In addition, there are no agreements or understandings regarding ownership or control at this time.

Opposition to Microband at 2; Opposition to Midwest at 4. We find the petitioners' unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation in light of Hubbard's rebuttal. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

8. With regard to Midwest's allegation that Hubbard failed to adequately demonstrate his financial qualifications pursuant to Section 21.17, we note that since Midwest's petition to deny was filed, the Commission revised rule Section 21.17 in *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987), to allow new applicants to submit a financial certification of their ability to meet estimated construction costs and the expenses of operating for a period of one year.[8] In that Rule Making order, the Commission stated:

> . . . In the NPRM we proposed to delete Section 21.17 because we believed that the requirement added to our regulatory burden and was a potential cause of unwarranted delay (for example when financial qualifications were unjustly challenged) without corresponding benefits to the public. . . . We conclude, therefore, that an attestation of the applicant's financial fitness is the most effective way of deterring speculative applications without burdening the applicants and the Commission staff with additional detailed information.

Id. at 5718-19.

> As discussed in paragraph 37, pending applications that will be granted after the new rules become effective will be treated as though they had been filed under the new rules. For those applications already containing financial data demonstrating financial ability to construct and operate the proposed facility, we will treat that information as if it were a certification of financial ability under the new rules. Only those applicants whose applications are deficient with regard to this information, and thus subject to dismissal, need file a financial certification statement, as prescribed by the new rules.

Id. at n. 57. Hubbard's application is subject to this policy. Hubbard will be required to file a financial certification within thirty (30) days of the release date of this order. Failure to submit the financial certification within thirty days may result in the dismissal of Hubbard's application.

9. Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's and Midwest's allegations, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, the petitions to deny filed by Microband and Midwest will be denied.

10. *Ordering Clause*. Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America and UACC Midwest, Inc. ARE HEREBY DENIED. IT IS FURTHER ORDERED that Jack G. Hubbard must submit a financial certification pursuant to 47 C.F.R. § 21.17 within thirty (30) days of the release date of this order.

11. This order is issued pursuant Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Thomas Glab, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Wiechman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband and Midwest argue that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in Peoria. If true, there would exist violations of both of these rules. *David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

> The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that both Microband and Midwest failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, the petitioners did not provide the amount of specific facts to substantiate their allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

[8] It should be emphasized that the financial certification requirement does not abrogate the requirement that an applicant must demonstrate that it is financially qualified. However, the new Section 21.17 changes only the manner in which such demonstration is made.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of

JACK G. HUBBARD File No. 5842-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
Seattle, Washington

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Jack G. Hubbard (Hubbard) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the Seattle, Washington area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) filed a post-lottery Petition to Deny,[1] challenging the application.

2. *Pleadings*. In its Petition, Microband alleges that Hubbard, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for Seattle, although Thomas Glab subsequently voluntarily withdrew his application. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Hubbard failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule.

3. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont*); *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz*).

4. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter as *Astroline*). In the instant case, Microband alleges the apparent existence of real-party-in-interest rule and one-to-the-market rule violations. After consideration of Microband's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Hubbard failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Lausisen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

5. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence and facts offered in rebuttal). Microband's allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

6. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004,7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed, with each application prepared by Steven Rullman and Edna Cornaggia, containing a site availability affidavit by Steven Rullman, a notarization by Edna Cornaggia, and an engineering certification by Joseph W. Hubbard. However, as Microband recognized, "Applications that are totally unrelated may be similar as a result of the coincidental use of common engineering and legal consultants."[7] Microband's Petition to Deny at 5.

7. We find Microband's unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987). Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's allegations are insufficient to raise a substantial or material question of fact. Accordingly, the petition to deny filed by Microband will be denied.

8. *Ordering Clause*. Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America IS HEREBY DENIED. This order is issued pursuant Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Thomas Glab, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Wiechman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband argues that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in Seattle. If true, there would exist violations of both of these rules. *David Lausisen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

> The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that Microband failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, Microband did not provide the amount of specific facts to substantiate its allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of the Application of

JACK G. HUBBARD File No. 5813-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
Nashville, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Jack G. Hubbard (Hubbard) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the Nashville, Tennessee area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) filed a post-lottery Petition to Deny,[1] challenging the application. Hubbard filed an Opposition to the Petition to Deny.

2. *Pleadings*. In its Petition, Microband alleges that Hubbard, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for Nashville although Kevin Rullman's application was subsequently withdrawn. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Hubbard failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule. Microband also contends that Hubbard has not adequately demonstrated his financial qualifications to be an MMDS licensee in violation of Section 21.17 of the Commission's Rules, 47 C.F.R. § 21.17.

3. In his opposition, Hubbard notes that Microband's Petition to Deny does "not contain a single affidavit in support of [Microband's] petition nor is there any proof or substantive evidence to substantiate [Microband's] allegations." Opposition at 2. Hubbard relies upon his sworn affidavit to support his assertion that he has not violated the real-party-in-interest and one-to-a-market rules. Responding to the allegation that he failed to adequately demonstrate his financial qualifications to construct and operate the above-referenced MMDS station, Hubbard submits an updated financial statement.

4. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont*); *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz*).

5. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter cited as *Astroline*). In the instant case, Microband alleges the apparent existence of real-party-in-interest rule, one-to-the-market rule, and financial qualification violations. After consideration of Microband's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Hubbard failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

6. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence K and facts offered in rebuttal). Microband's allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

7. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004, 7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed and that both Thomas Glab and Joseph W. Hubbard held partnership interests in Warren Electronics, Inc. and in Hydra Communications, Inc. However, as Microband recognized, "Applications that are totally unrelated may be similar as a result of the co-incidental use of common engineering and legal consultants."[7] In his Opposition, Hubbard states in rebuttal:

> There were no agreements or understandings existent or under negotiation at the time of the filing of these applications which affected the ownership or control of the proposed facilities, or any right or interest therein by any person not a party to my application. In addition, there are no agreements or understandings regarding ownership or control at this time.

Opposition at 3. We find Microband's unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation in light of Hubbard's rebuttal. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

8. With regard to Microband's allegation that Hubbard failed to adequately demonstrate his financial qualifications pursuant to Section 21.17, we note that since Microband's petition to deny was filed, the Commission revised rule Section 21.17 in *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987), to allow new applicants to submit a financial certification of their ability to meet estimated construction costs and the expenses of operating for a period of one year.[8] In that Rule Making order, the Commission stated:

> . . . In the NPRM we proposed to delete Section 21.17 because we believed that the requirement added to our regulatory burden and was a potential cause of unwarranted delay (for example when financial qualifications were unjustly challenged) without corresponding benefits to the public. . . . We conclude, therefore, that an attestation of the applicant's financial fitness is the most effective way of deterring speculative applications without burdening the applicants and the Commission staff with additional detailed information.

Id. at 5718-19.

> As discussed in paragraph 37, pending applications that will be granted after the new rules become effective will be treated as though they had been filed under the new rules. For those applications already containing financial data demonstrating financial ability to construct and operate the proposed facility, we will treat that information as if it were a certification of financial ability under the new rules. Only those applicants whose applications are deficient with regard to this information, and thus subject to dismissal, need file a financial certification statement, as prescribed by the new rules.

Id. at n. 57. Hubbard's application is subject to this policy. Hubbard will be required to file a financial certification within thirty (30) days of the release date of this order. Failure to submit the financial certification within thirty days may result in the dismissal of Hubbard's application.

9. Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's allegations, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, the petition to deny filed by Microband will be denied.

10. *Ordering Clause.* Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America IS HEREBY DENIED. IT IS FURTHER ORDERED that Jack G. Hubbard must submit a financial certification pursuant to 47 C.F.R. § 21.17 within thirty (30) days of the release date of this order.

11. This order is issued pursuant Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Thomas Glab, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Wiechman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband argues that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in Nashville. If true, there would exist violations of both of these rules. *David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

> The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that Microband failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, Microband did not provide the amount of specific facts to substantiate its allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

[8] It should be emphasized that the financial certification requirement does not abrogate the requirement that an applicant must demonstrate that it is financially qualified. However, the new Section 21.17 changes only the manner in which such demonstration is made.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of the Application of

THOMAS GLAB File No. 5026-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
Hartford, Connecticut

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Thomas Glab (Glab) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the Hartford, Connecticut area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) filed a post-lottery Petition to Deny,[1] challenging the application. Glab filed an Opposition to the Petition to Deny.

2. *Pleadings*. In its Petition, Microband alleges that Glab, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for Hartford, although Kevin Rullman subsequently withdrew his application. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Glab failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule. Microband also contends that Glab has not adequately demonstrated his financial qualifications to be an MMDS licensee in violation of Section 21.17 of the Commission's Rules, 47 C.F.R. § 21.17.

3. In his opposition, Glab notes that Microband's Petition to Deny does "not contain a single affidavit in support of [Microband's] petition nor is there any proof or substantive evidence to substantiate [Microband's] allegations." Opposition at 2. Glab relies upon his sworn affidavit to support his assertion that he has not violated the real-party-in-interest and one-to-a-market rules. Responding to the allegation that he failed to adequately demonstrate his financial qualifications to construct and operate the above-referenced MMDS station, Glad submits an updated financial statement.

4. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont*); *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz*).

5. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter cited as *Astroline*). In the instant case, Microband alleges the apparent existence of real-party-in-interest rule, one-to-the-market rule, and financial qualification violations. After consideration of Microband's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Glab failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Lausisen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

6. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence and facts offered in rebuttal). Microband's allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

7. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004, 7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed. However, it has been recognized that applications that are totally unrelated may be similar as a result of the coincidental use of common engineering and legal consultants.[7] *Thomas Glab*, 5 FCC Rcd 516 (Dom. Fac. Div. 1990). In his Opposition, Glab states in rebuttal:

> There were no agreements or understandings existent or under negotiation at the time of the filing of these applications which affected the ownership or control of the proposed facilities, or any right or interest therein by any person not a party to my application. In addition, there are no agreements or understandings regarding ownership or control at this time.

Opposition at 2. We find Microband's unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation in light of Glab's rebuttal. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

8. With regard to Microband's allegation that Glab failed to adequately demonstrate his financial qualifications pursuant to Section 21.17, we note that since Microband's petition to deny was filed, the Commission revised rule Section 21.17 in *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987), to allow new applicants to submit a financial certification of their ability to meet estimated construction costs and the expenses of operating for a period of one year.[8] In that Rule Making order, the Commission stated:

> . . . In the NPRM we proposed to delete Section 21.17 because we believed that the requirement added to our regulatory burden and was a potential cause of unwarranted delay (for example when financial qualifications were unjustly challenged) without corresponding benefits to the public. . . . We conclude, therefore, that an attestation of the applicant's financial fitness is the most effective way of deterring speculative applications without burdening the applicants and the Commission staff with additional detailed information.

Id. at 5718-19.

> As discussed in paragraph 37, pending applications that will be granted after the new rules become effective will be treated as though they had been filed under the new rules. For those applications already containing financial data demonstrating financial ability to construct and operate the proposed facility, we will treat that information as if it were a certification of financial ability under the new rules. Only those applicants whose applications are deficient with regard to this information, and thus subject to dismissal, need file a financial certification statement, as prescribed by the new rules.

Id. at n. 57. Glab's application is subject to this policy. Glab will be required to file a financial certification within thirty (30) days of the release date of this order. Failure to submit the financial certification within thirty days may result in the dismissal of Glab's application.

9. Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's allegations, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, the petition to deny filed by Microband will be denied.

10. *Ordering Clause*. Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America IS HEREBY DENIED. IT IS FURTHER ORDERED that Thomas Glab must submit a financial certification pursuant to 47 C.F.R. § 21.17 within thirty (30) days of the release date of this order.

11. This order is issued pursuant Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Thomas Glab, Jack G. Hubbard, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Wiechman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband argues that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in Hartford. If true, there would exist violations of both of these rules. *David Lausisen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that Microband failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, Microband did not provide the amount of specific facts to substantiate its allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

[8] It should be emphasized that the financial certification requirement does not abrogate the requirement that an applicant must demonstrate that it is financially qualified. However, the new Section 21.17 changes only the manner in which such demonstration is made.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of

THOMAS GLAB File No. 5064-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
Tallahassee, Florida

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Thomas Glab (Glab) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the Tallahassee, Florida area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) filed a post-lottery Petition to Deny,[1] challenging the application. Glab filed an Opposition to the Petition to Deny.

2. *Pleadings*. In its Petition, Microband alleges that Glab, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for Tallahassee. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Glab failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule. Microband also contends that Glab has not adequately demonstrated his financial qualifications to be an MMDS licensee in violation of Section 21.17 of the Commission's Rules, 47 C.F.R. § 21.17.

3. In his opposition, Glab notes that Microband's Petition to Deny does "not contain a single affidavit in support of [Microband's] petition nor is there any proof or substantive evidence to substantiate [Microband's] allegations." Opposition at 2. Glab relies upon his sworn affidavit to support his assertion that he has not violated the real-party-in-interest and one-to-a-market rules. Responding to the allegation that he failed to adequately demonstrate his financial qualifications to construct and operate the above-referenced MMDS station, Glab submits an updated financial statement.

4. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont*); *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz*).

5. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter as *Astroline*). In the instant case, Microband alleges the apparent existence of real-party-in-interest rule, one-to-the-market rule, and financial qualification rule violations. After consideration of Microband's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Glab failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

6. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence and facts offered in rebuttal). Microband's allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

7. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin*

Television Improvement Corp., 2 FCC Rcd 7004, 7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed and that both Glab and Joseph W. Hubbard held partnership interests in Warren Electronics, Inc. and in Hydra Communications, Inc. However, as Microband recognized, "Applications that are totally unrelated may be similar as a result of the coincidental use of common engineering and legal consultants."[7] In his Opposition, Glab states in rebuttal:

> There were no agreements or understandings existent or under negotiation at the time of the filing of these applications which affected the ownership or control of the proposed facilities, or any right or interest therein by any person not a party to my application. In addition, there are no agreements or understandings regarding ownership or control at this time.

Opposition at 2. We find Microband's unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation in light of Glab's rebuttal. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

8. With regard to Microband's allegation that Glab failed to adequately demonstrate his financial qualifications pursuant to Section 21.17, we note that since Microband's petition to deny was filed, the Commission revised rule Section 21.17 in *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987), to allow new applicants to submit a financial certification of their ability to meet estimated construction costs and the expenses of operating for a period of one year.[8] In that Rule Making order, the Commission stated:

> . . . In the NPRM we proposed to delete Section 21.17 because we believed that the requirement added to our regulatory burden and was a potential cause of unwarranted delay (for example when financial qualifications were unjustly challenged) without corresponding benefits to the public. . . . We conclude, therefore, that an attestation of the applicant's financial fitness is the most effective way of deterring speculative applications without burdening the applicants and the Commission staff with additional detailed information.

Id. at 5718-19.

> As discussed in paragraph 37, pending applications that will be granted after the new rules become effective will be treated as though they had been filed under the new rules. For those applications already containing financial data demonstrating financial ability to construct and operate the proposed facility, we will treat that information as if it were a certification of financial ability under the new rules. Only those applicants whose applications are deficient with regard to this information, and thus subject to dismissal, need file a financial certification statement, as prescribed by the new rules.

Id. at n. 57. Glab's application is subject to this policy. Glab will be required to file a financial certification within thirty (30) days of the release date of this order. Failure to submit the financial certification within thirty days may result in the dismissal of Glab's application.

9. Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's allegations, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, the petition to deny filed by Microband will be denied.

10. *Ordering Clause*. Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America IS HEREBY DENIED. IT IS FURTHER ORDERED that Thomas Glab must submit a financial certification pursuant to 47 C.F.R. § 21.17 within thirty days of the release date of this order.

11. This order is issued pursuant Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Jack G. Hubbard, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Weichman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband argues that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in Tallahassee. If true, there would exist violations of both of these rules. *David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

> The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that Microband failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, Microband did not provide the amount of specific facts to substantiate its allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

[8] It should be emphasized that the financial certification requirement does not abrogate the requirement that an applicant must demonstrate that it is financially qualified. However, the new Section 21.17 changes only the manner in which such demonstration is made.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 8, 1990

GTE TELEPHONE COMPANIES
REQUEST FOR WAIVER OF AMORTIZATION
METHODOLOGY REQUIREMENTS
Pleading Cycle Established

Interested persons are hereby invited to comment on a request for waiver filed with the Commission on February 9, 1990, by GTE Service Corporation and its affiliated domestic telephone operating companies (GTE). The request seeks a waiver from the amortization methodology specified by the Commission in CC Docket No. 87-135 which amended Part 32 of the Commission's Rules, Uniform System of Accounts for Class A and Class B Telephone Companies (USOA) to raise expense limits for certain items of equipment from $200 to $500.

In the Report and Order adopted on June 28, 1988, 3 FCC Rcd 4464, the Commission required carriers prospectively to expense in the year of purchase the specified items of equipment costing $500 or less rather than to capitalize and depreciate such equipment. In addition, in an Order on Reconsideration adopted October 24, 1989, 4 FCC Rcd 8229, the Commission provided telecommunications companies relief from requirements in Section 32.2000(e) and 32.2000(f) of the USOA to maintain continuing property records for previously capitalized items in the specified categories of equipment costing $500 or less. The Commission also established an eight-year amortization period for the undepreciated balances of the same items.

Rather than implementing the methodology for amortizing the undepreciated balances as specified in the Order on Reconsideration, GTE proposes to use a modified means to effect the amortization. GTE would segregate the embedded balances and associated accumulated depreciation and would amortize the net investment amount over the required eight years using the proposed alternative. GTE asserts that this procedure would accomplish the same result as required by the Commission in the Order on Reconsideration.

Parties wishing to comment on GTE's request for waiver should do so no later than **March 22, 1990.** Reply comments should be filed no later **April 2, 1990.**

Parties are requested to serve copies of their comments on International Transcription Services at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and on Kenneth P. Moran, Chief, Accounting and Audits Division, 2000 L Street, N.W., Washington, D.C. 20554. Copies of filings in this proceeding may be obtained from International Transcription Services, 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection and copying in Room 812, 2000 L Street, N.W., Washington, D.C. 20554.

For further information contact John T. Curry, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of

COMMUNICATIONS ENGINEERING, INC.
Las Vegas, Nevada

File No. LGL-135

For a waiver of Section 94.9(b)(1)

ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Land Mobile and Microwave Division:

INTRODUCTION

1. Communications Engineering, Inc. (CEI) is authorized in the Private Operational Fixed Microwave Service to provide a three-hop digital communications system linking Las Vegas, Nevada, and Bullhead City, Arizona.[1] A combination of 1.9 and 23 GHz frequencies are employed, providing a maximum capacity of four T1 lines (96 channels).[2] CEI uses the system to control remote status alarm systems, private carrier paging transmitters, and as a specialized mobile radio (SMR) system interconnect. Excess capacity is leased to Colorado River Communications (Colorado), which offers communications service to local eligible companies in the area.[3] CEI states that four individuals who are owners or associates of Colorado's business clients are interested in leasing capacity on an interim basis for their personal non-business communications. Because Section 94.9(b)(1) of the Commission's Rules, 47 C.F.R. § 94.9(b)(1), specifically prohibits common carrier traffic on OFS frequencies, CEI seeks a waiver of that provision for this venture.

DISCUSSION

2. In support of its waiver request, CEI claims that Bullhead City is not large enough to be considered a "first tier" communications market because it is not located on a main communications corridor, and therefore sophisticated communications services are not readily available from common carrier sources. Colorado is planning its own digital microwave common carrier network between the two cities, but licensing and equipment procurement lead times will delay startup of the system up to two years. In the interim, CEI states that the only alternative communications system available besides their OFS system is a long, circuitous route requiring three common carriers and 1026 miles of analog transmissions. They state a common carrier private line service between the two cities would take four to six months to install with no guarantee of a good level of service quality. CEI feels that utilization of their 75 mile digital system is a more efficient solution which would provide a higher quality of service and reliability at a lower cost. CEI says that the limited nature of its request does not undermine the reason for the prohibition against carriage of common carrier traffic contained in Rule Section 94.9(b)(1), that is, to assure that private microwave facilities are used for permissible uses by eligible entities only.

3. Pursuant to Section 94.33(c) of the Commission's Rules, 47 C.F.R. § 94.33(c), the Commission may waive any provision of its Rules if unique circumstances exist and there are no other reasonable alternatives available. Although the only available alternative is a 1,026 mile long analog path requiring service from three common carriers, it is currently and readily available. The lead time specified by CEI for common carrier implementation of the required service appears to apply to dedicated lines which have not been justified. With standard telephone service already in place, CEI's request appears to be driven by a desire of certain individuals for higher quality telephone service than is normally available from the common carrier industry. In the absence of any demonstrated need unmet by the present level of service, this is insufficient justification for a waiver of Rule 94.9(b)(1).

4. CEI cites several previous waivers of Section 94.9.[4] Each of these cases differ from the case before us, however, in that the applicants in them sufficiently demonstrated that no alternative means of communications, common carrier or otherwise, was available. In each of these situations, the Bureau determined that the intent of the rule would not be undermined by its waiver, and to insure this, not only limited the waivers' duration, but required that sufficient capacity remained so that the licensee's ability to handle permissible communications was not compromised.[5] *See Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d (D.C. Cir. 1969).

ORDERING CLAUSE

5. Accordingly, pursuant to Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331 and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, CEI's request for a waiver of Section 94.9(b)(1) of the Commission's Rules, 47 C.F.R. § 94.9(b)(1) is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and Microwave Division

FOOTNOTES

[1] OFS stations WNER 465 through WNER 467, and WNES 950.

[2] From Las Vegas to Laughlin, Nevada, the link is entirely 1.9 GHz, and the maximum capacity is eight T1 lines.

[3] CEI specifically cited service to Bullhead City Electric Company and Bullhead City Community Hospital.

[4] Arco Communications, Inc., 3 FCC Rcd. 6952 (1988); Northwest Pipeline Corporation, 3 FCC Rcd. 6690 (1988); Mobile Oil Telecom, Ltd., FCC Rcd. 3 FCC Rcd. 5832 (1988).

[5] Waiver duration was not limited in the case of ARCO Communications, Inc., which involved remote areas in Alaska; construction of common carrier facilities was considered unlikely.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GENERAL ELECTRIC COMPANY

For a Declaratory Ruling Concerning
Section 310(b)(4) of the
Communications Act of 1934

MEMORANDUM OPINION AND ORDER

Adopted: March 2, 1990; Released: March 8, 1990

By the Common Carrier Bureau:

I. INTRODUCTION

1. General Electric Company (GE) requests a declaratory ruling that the holding of corporate officer positions by an alien in two GE subsidiary corporations will not adversely affect the public interest under Section 310(b)(4) of the Communications Act, 47 U.S.C. § 310(b)(4), with respect to the common carrier radio licenses held by GE's subsidiary, GE American Communications, Inc. (GE Americom). GE's request for a declaratory ruling was placed on public notice on December 27, 1989.[1] No comments were filed. For the reasons discussed below, we find that the appointments would not adversely impact the public interest under Section 310(b)(4).

2. GE plans to restructure its ownership of GE Americom, which holds various common carrier domestic satellite and point-to-point microwave licenses. Currently, all of the outstanding stock of GE Americom is held by five wholly-owned subsidiaries of GE. These are GE Subsidiary, Inc. 22, GE Subsidiary, Inc. 23, GE Subsidiary, Inc. 24, GE Subsidiary, Inc. 25, and GE Subsidiary, Inc. 26 (the Numbered Subsidiaries). GE proposes to interpose two additional wholly-owned subsidiaries -- General Electric Financial Services, Inc. (GEFS) and its wholly-owned subsidiary, General Electric Capital Corporation (GECC) -- into the ownership chain between GE and the Numbered Subsidiaries. Thus, after the restructuring, all of GE Americom's stock will continue to be held by the Numbered Subsidiaries.

3. GE states while there is no change in ownership of GE Americom, the alien ownership provisions of the Communications Act are implicated because Michael A. Carpenter, a citizen of the United Kingdom, is an Executive Vice President and Director of both GEFS and GECC. Mr. Carpenter is also President and Chief Executive Officer of Kidder Peabody Group, Inc. (Kidder Peabody), which is wholly-owned by GEFS. GE states that GEFS provides financial services through GECC, Kidder Peabody and its other principal subsidiary, Employers Reinsurance Corporation. It states that GECC is also involved in the insurance industry. GE also notes that Mr. Carpenter was previously permitted to serve as a vice president of GE pursuant to a Section 310 ruling in 1986.[2]

II. DISCUSSION

4. Section 310(b)(4) of the Communications Act provides that common carrier radio licenses shall not be granted to or held by:

> any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens. . .if the Commission finds that the public interest will be served by the refusal or revocation of such license.

5. The restrictions in Section 310(b)(4) reflect security concerns and are designed to guard against foreign influence by curbing aliens' participation in certain domestic radio activities.[3] In deciding whether to prohibit aliens from serving as officers or directors of parent companies in a given instance, the Commission considers the public interest and whether the individual's position would require the radio licenses to be revoked or license renewals denied.[4]

6. GE represents that Mr. Carpenter will be the only one of thirteen elected officers of GEFS and only one of thirty-three elected officers of GECC who is not a United States citizen. In both cases, he will be functioning under the direction of a Chief Executive Officer who is a United States citizen. Moreover, the boards of directors of both companies are composed of more than 90 percent United States citizens (93.75 percent for GEFS; 91.66 percent for GECC). In addition, Mr. Carpenter will not serve as an officer or director of GE Americom nor will he have any responsibilities, including advisory and non-operational responsibilities, with respect to any common carrier facilities licensed to GE Americom.

7. In light of the facts set forth in GE's request, we find that Mr. Carpenter's positions as Executive Vice-President and Director of GEFS and GECC would not require the revocation of the common carrier radio licenses held by GE Americom.

8. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.291, that GE Electric Company's request for a declaratory ruling IS GRANTED, and the Commission has no legal objection under Section 310(b)(4) of the Communications Act, 47 U.S.C. § 310(b)(4), to Michael A. Carpenter serving as a corporate officer and director of General Electric Financial Services, Inc. and General Electric Capital Corporation.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Public Notice Report No. DS-924.

[2] *See* Letter from Chief, Mass Media Bureau to Counsel, GE (January 22, 1986).

[3] *See* Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended,. 103 FCC 2d 511, 516-517 (1985).

[4] *See* Data General Corp., Mimeo No. 3385 (March 26, 1986); International Telephone and Telegraph Corp., 67 FCC 2d 604 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

PRESCO CORPORATION — File No. 12059-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service station on F-group channels to serve the Roanoke, Virginia area

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. The above-referenced application of Presco Corporation (Presco) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels to serve the Roanoke, Virginia area was selected for qualification review as the result of a Commission lottery. The Committee for Fair MDS Lotteries (Committee) filed a post-lottery Petition to Deny,[1] challenging the application. Presco filed a Reply To Petition.

2. The Committee alleged in its Petition to Deny that:

> Bruce Merrill (through his employee, Marshall Carpenter), recruited O. Leonard Press, the owner and chairman of Presco, to file MMDS applications supplied by Merrill Communications; arranged for Presco's financing; arranged and paid for the preparation of its MMDS applications; and received certain valuable rights under a "Letter of Understanding" between Presco and Merrill Communications. Such indicia of Bruce Merrill's control over Presco strongly suggest that a violation of Sections 21.13(a) and 21.901(d)(2) of the Commission's Rules has occurred.

Petition at iii. The Committee argued that Presco, together with fifteen (15) other MMDS applicants,[2] engaged in an orchestrated effort to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All sixteen of these applicants filed MMDS applications for the Roanoke area. The Committee contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that several of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Presco failed to disclose the identity of the real-party-in-interest to its application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a). The Committee claims further that the facts it cites show multiple applications were filed in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), known as the one-to-a-market rule.

3. In its Reply, Presco incorporates by reference statements in its affidavits and arguments in its pleadings previously filed with the Commission for other MMDS proceedings to demonstrate that Bruce Merrill and Merrill Communications have "never had any rights to own or control any of the applicant's MMDS facilities, is not a real-party-in-interest to any of the applications, and does not have a cognizable interest in any of the applications, pursuant to Section 21.902(a)(1) of the Commission's Rules." Reply at 2.

4. These allegations by the Committee concerning violations of the real-party-in-interest rule and the one-to-a-market rule are not unique to this particular proceeding concerning Presco's application to construct and operate this Roanoke MMDS station. These allegations, as applied to Presco were considered and rejected by the Commission in *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987) (hereinafter cited as *VCI*). For the reasons provided in that decision, the Committee's Petition to Deny is denied.

5. In *VCI*, the Commission held the Letter of Understanding did not place Bruce Merrill in a position of control over, nor give Bruce Merrill a cognizable interest in, the subject applications. Nevertheless, it found that the Letter, despite its disputed legal effect, strongly suggested that the applicants intended to reserve transmission time and channel capacity for the exclusive use of Merrill Communications in consideration of Merrill Communications' assistance in preparing the applications. Hence, the Letter was found to raise questions regarding the applicant's intent to comply with Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 202(a), that provides "it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications . . . or to make or given any undue or unreasonable preference or advantage to any particular person . . . ." 47 U.S.C. § 202(a). As a result, the Commission found that the public interest would best be served by imposing a condition on any MMDS authorization issued to VCI or any of the other fifteen MMDS applicants, including Presco, requiring the holding out of the service to the public generally for a period of 60 days from the date their formal tariffs are effective. The licensees may not accept Bruce Merrill, or Merrill Communications, or any entity in which Bruce Merrill is affiliated, as a customer-programmer during that 60-day period. After the initial 60-day public offering, Presco would be free to lease any remaining capacity to Merrill. *See VCI*, 2 FCC Rcd 1900. We remind Presco that this condition, imposed by the Commission in the *VCI* decision, remains applicable to any MMDS authorization issued to it.

ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED that the Petition to Deny of The Committee for Fair MDS Lotteries is hereby DENIED.

7. This order is issued pursuant Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §

1.106, or applications for review pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan, Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, the Committee incorporated by reference the petition to deny filed by The Committee for a Fair Boston E Group Lottery in *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

[2] The fifteen applicants named by the Committee are B.F. Investments, Inc., Champion Industries, Inc., Fortuna Systems Corp., Line of Site, Inc., Mettler Communications, Inc., Microwave Video Services, Inc., Multi-Micro, Multi-Point Television Distributors, Inc., MWTV, Inc., Paul Communications, Inc., Presco Corporation, Stephen Communications, Inc., Video/Multipoint, Inc., Virginia Communications, Inc., Walter Communications, Inc., and Wireless Services, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-82

In re Applications of

RONNIE E. AND MILDRED G. PRICE (hereafter "Price") — File No. BPH-880318MO

JUDITH ANN DAVIS & BARBARA JO FAITH (hereafter Davis & Faith) — File No. BPH-880407MH

For Construction Permit for a New FM Station on Channel 268A in Beebe, Arkansas

HEARING DESIGNATION ORDER

Adopted: February 16, 1990; Released: March 8, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Price.* On December 2, 1988, Davis & Faith filed a Petition to Deny Price's application, alleging that: (i) Price's application must be dismissed for failure to comply with the Commission's city average requirements, 47 C.F.R. § 73.315(a); and (ii) Price's amendment correcting that defect which was received on May 31, 1988, must be dismissed because it was not signed by either of Price's principals. The May amendment was indeed unsigned by either of Price's principals but was signed only by its technical consultant. Under 47 C.F.R. § 73.3513(d), the amendment is unacceptable and will be returned below. With respect to the allegations regarding city coverage, the staff has conducted a technical study of Price's application and finds that the proposal complies with the Commission's city coverage requirements. Accordingly, the petition will be granted to the extent indicated and denied in all other respects.

3. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Price have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Price would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Price would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That Davis & Faith's December 2, 1988, Petition to Deny IS GRANTED to the extent indicated and denied in all other respects, and Price's amendment, received on May 31, 1988, IS RETURNED.

7. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-317

In the Matter of

Amendment of Section 73.202(b), RM-6677
Table of Allotments,
FM Broadcast Stations.
(Taos, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 26, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. At the request of Taos County Radio (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 5607 (1989), proposing the substitution of Channel 260C2 for Channel 260A at Taos, New Mexico, and the modification of its construction permit for Station KRBJ to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 260C2 for Channel 260A at Taos, New Mexico, since it could enable Station KRBJ to expand its coverage area. Channel 260C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.8 kilometers (16.0 miles) northeast to accommodate petitioner's desired transmitter site.[1] As proposed, we will also modify petitioner's construction permit to specify Channel 260C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Taos, New Mexico	260C2, 268C2

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Taos County Radio, for Station KRBJ, Taos, New Mexico, IS MODIFIED to specify operation on Channel 260C2, in lieu of Channel 260A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 36-32-10 and West Longitude 105-20-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-306

In the Matter of

Amendment of Section 73.202(b), RM-6671
Table of Allotments,
FM Broadcast Stations.
(Elko, Nevada)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 26, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. At the request of Holiday Broadcasting Company of Elko (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 5416 (1989), proposing the substitution of Channel 237C for Channel 237A at Elko, Nevada, and the modification of its license for Station KRJC to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 237C, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 237C for Channel 237A at Elko, since it could enable Station KRJC to expand its coverage area. As proposed, we will also modify petitioner's license for Station KRJC to specify operation on Channel 237C. Channel 237C can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Elko, Nevada	229C2, 237C

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Holiday Broadcasting of Elko, for Station KRJC, Elko, Nevada, IS MODIFIED to specify operation on Channel 237C, in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 40-54-35 and West Longitude 115-49-05.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-104

In the Matter of

Amendment of Section 73.202(b), RM-7166
Table of Allotments,
FM Broadcast Stations.
(Berryville, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by KTHS/KSCC, Inc., (petitioner), licensee of Station KSCC(FM), Channel 296A, Berryville, Arkansas, seeking the substitution of Channel 296C3 for Channel 296A and modification of its license accordingly, to specify the higher power channel.

2. A staff engineering analysis of the proposal reveals that Channel 296C3 can be allotted to Berryville at the petitioner's specified site 21.3 kilometers (13.2 miles) east[1] of the community in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. We believe the proposal warrants consideration. Therefore, we shall propose to substitute Channel 296C3 for Channel 296A at Berryville, Arkansas. As requested, we also propose to modify the Class A license of Station KSCC(FM) to specify operation on Channel 296C3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 296C3 at Berryville.

4. Accordingly, in order to provide Berryville with its first expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Berryville, Arkansas	296A	296C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 30, 1990,** and reply comments on or before **May 15, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

A. Thomas Earls
President, KTHS/KSCC, Inc.
P.O. Box 191
Berryville, AR 72616

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for proposed Channel 296C3 at Berryville are 36-20-00 and 93-20-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-105

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Lonoke, Arkansas and Clarksdale, Mississippi) RM-7165

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: February 22, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Dunn Broadcasting Corporation (petitioner), licensee of Station KWTD(FM), Channel 292A, Lonoke, Arkansas, requesting the substitution of Channel 292C2 for Channel 292A at Lonoke, and modification of the license for Station KWTD(FM) to specify operation on the higher powered channel. In order to accommodate the request in conformity with the Commission's minimum distance separation requirements, petitioner also requests the substitution of Channel 229A for Channel 292A at Clarksdale, Mississippi, and modification accordingly of the Class A license of Radio Cleveland, Incorporated, for Station WAID(FM).

2. Channel 292C2 can be substituted for Channel 292A at Lonoke at the petitioner's suggested site 19.7 kilometers (12.3 miles) south[1] of the community. Channel 229A can be substituted for Channel 292A at Clarksdale at the present transmitter site of Station WAID(FM).[2]

3. Since the petitioner's modification request at Lonoke, Arkansas, conforms with the provisions of Section 1.420 of the Commission's Rules, we shall propose to modify the facilities of Station KWTD(FM) without entertaining other expressions of interest. In addition, we shall direct an *Order to Show Cause* to the licensee of WAID(FM) at Clarksdale, Mississippi, as to why its license should not be modified to specify operation on Channel 229A.

4. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred. In this instance, petitioner has stated its willingness to reimburse Station WAID(FM) for its reasonable costs incurred in moving to Channel 229A.

5. In view of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No. Present	Proposed
Lonoke, Arkansas	292A	292C2
Clarksdale, Mississippi	243A, 269A, 292A	229A, 243A, 269A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Radio Cleveland, Incorporated, licensee of Station WAID(FM), Clarksdale, Mississippi, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 229A in lieu of Channel 292A.

7. Pursuant to Section 1.87 of the Commission's Rules, Radio Cleveland, Incorporated may, not later than **April 30, 1990,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Radio Cleveland, Incorporated to furnish additional information. If Radio Cleveland, Incorporated raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radio Cleveland, Incorporated will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the licensee of Station WAID(FM) as follows: Radio Cleveland Incorporated, P.O. Drawer 668, Clarksdale, Mississippi 38614.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **April 30, 1990,** and reply comments on or before **May 15, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David M. Hunsaker, Esq.
Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of*

the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Coordinates at the petitioner's suggested site for Channel 292C2 at Lonoke are 34-37-02 and 91-49-22.

[2] Coordinates at the licensed site of Station WAID(FM) at Clarksdale are 34-09-22 and 90-37-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-123

In the Matter of

Amendment of Section 73.202(b), RM-5939
Table of Allotments,
FM Broadcast Stations.
(Grover City, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February, 22, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 3 FCC Rcd 1936 (1988), proposing the substitution of Channel 297B for Channel 297B1 at Grover City, California, and modification of the license of WESTCOM Communications, Inc., (WESTCOM) for Station KWCD(FM),[1] Channel 297B1, to specify operation on the higher class channel.[2] Supporting comments were filed by the former licensee. Additionally, WESTCOM submitted suppplemental comments.[3]

2. Although the *Notice* indicated that Channel 297B could be allotted to Grover City at the present transmitter site of Station KWCD,[4] we note that determination did not take into consideration the allotment of Channel 294B1 at Lompoc, California, in MM Docket No. 86-384.[5] However, a staff engineering analysis has determined that Channel 297B can be allotted to Grover City in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter for Station KWCD(FM) is sited at least 12 kilometers (7.5 miles) north of the community to avoid short-spacing to Channel 294B1 at Lompoc.[6]

3. On the basis of the above, the Commission believes the public interest would be served by substituting Channel 297B for Channel 297B1 at Grover City, since it could provide a wider coverage FM service. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KWCD(FM) to specify operation on Channel 297B in lieu of Channel 297B1 at Grover, California.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Grover City, California	297B

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of WESTCOM Communications, Inc. for Station KWCD(FM), IS MODIFIED effective **April 23, 1990,** to specify operation on Channel 297B in lieu of Channel 297B1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Formerly Station KOSZ(FM).

[2] At the time this proposal was filed, R & L Broadcasters was the licensee of Station KOSZ(FM), Channel 297B1, Grover City. An assignment of the license to WESTCOM Communications, Inc., formerly P-B Broadcasting, Inc., was subsequently granted June 22, 1989, and the call letters changed to KWCD(FM). *See* File No. BALH-881109HO.

[3] These comments, which advise us of the recent assignment of license of Station KWCD(FM) from R & L Broadcasters to WESTCOM, were accompanied by a motion to accept. The comments will be accepted.

[4] Coordinates at the present site of Station KWCD(FM) are 35-06-25 and 120-30-57.

[5] Coordinates at the site specified for Channel 294B1 at Lompoc are 34-34-05 and 120-32-44.

[6] Coordinates for Channel 297B at Grover City are 35-13-50 and 120-26-34. This site also clears two applications tendered for filing at Lompoc (File No. 881011MH, at coordinates 34-34-57 and 120-29-12 and File No. 881020MB, at coordinates 34-35-34 and 120-30-23). Although an applied for, but unauthorized transmitter site generally reflects a preference for a particular

location and thus is not favored over the provision of a new service (*see, Andalusia, AL*, 49 FR 32201, August 12, 1984, and cases cited therein), the Commission will endeavor to accommodate all parties if other sites appear to be available. *See, Ephrata, WA*, 4 FCC Rcd 307 (1989). This is especially true where, as here, the petitioner's proposal requires a transmitter relocation in any event to comply with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, and where, as here, the record evidence gives no indication that the petitioner's site represents anything other than a mere preference.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-101

In the Matter of

Amendment of Section 73.202(b), RM-6654
Table of Allotments,
FM Broadcast Stations.
(Chateaugay, New York)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 22, 1990; Released: March 9, 1990

By the Chief, Allocations Branch:

1. At the request of Four Seasons Communications, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 3935 (1989), proposing the allotment of Channel 234A to Chateaugay, New York, as the community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 234A to Chateaugay, New York, since an interest has been expressed in providing the community with its first local FM service. Channel 234A can be allotted to Chateaugay in compliance with the Commission's minimum distance separation requirements to avoid prohibited interference to Canadian stations and/or allotments at Montreal, Vianney, Trois Riveres and Hull, Quebec, Canada.[1] Canadian concurrence in the allotment has been received since Chateaugay is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Chateaugay, New York	234A

4. The window period for filing applications will open on **April 24, 1990,** and close on **May 24, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 44-54-57 and West Longitude 74-04-50. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. *See* 47 CFR Section 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166
Phase II, Part 1

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers

ORDER

Adopted: March 5, 1990; Released: March 9, 1990

By the Chief, Common Carrier Bureau:

1. By an Order in the captioned docket the Commission found that certain strategically-set special access rates were unlawful.[1] In that Order, the Commission directed the local exchange carriers (LECs) whose rates it found to be unlawful to make refunds of a portion of the earnings derived from the unlawful rates. The Commission directed the affected LECs to file, within 40 days of the release of the *Implementation Order*, reports describing in detail their efforts to effectuate these refunds. In addition, the Commission required the LECs to place the total refund amounts in interest-bearing escrow accounts pending final disbursement of the refunds. The deadline for compliance with these reporting and escrow requirements is March 5, 1990. The Commission further directed that the LECs make the required refunds to their customers within 80 days of the release of that Order. Finally, the Commission delegated to the Bureau the authority to oversee the refund process.[2]

2. On February 28, 1990 the Diamond State Telephone Company (Diamond) requested waiver of the requirement of the *Implementation Order* that it place the refund amounts in escrow.[3] On March 2, 1990, Nevada Bell (Nevada) filed an essentially identical request.[4] In the *Implementation Order* the Commission found that Diamond had overearned for the special access category by $744,000 for the period from October 1, 1985 to December 31, 1986.[5] The Commission further found that Nevada had overearned for the special access category by $961,000 for the period January 1, 1987 through December 31, 1988.[6]

3. The *Implementation Order* requires Diamond and Nevada to calculate the amount they must refund in order to bring their strategically set rates down to a lawful level. Diamond states that its refund liability equals $164,000 before interest. Nevada contends that it must refund $51,414, before interest, in order to comply with the Commission's directive. Diamond and Nevada state that they wish to refund these amounts by March 15, 1990 and argue that the expense and administrative effort associated with establishing an escrow account is disproportionate to the relatively small sums they propose to refund.

4. Under the circumstances described in the letters filed by Diamond and Nevada, we conclude that the public interest would be served by grant of the requested waivers of the requirement that Diamond and Nevada place the amounts of their strategic pricing refunds in escrow. Petitioners assure us that they intend to disburse the refund amounts that they have calculated by March 15, 1990. No purpose would be served by requiring Diamond and Nevada to escrow the refund amounts when the companies have indicated their intent to disburse these funds so promptly. We direct Diamond and Nevada to inform the Bureau, by letter, of the amounts refunded to individual recipients within five business days of disbursement of these funds.

5. We emphasize, however, that the waiver of the escrow requirement does not absolve petitioners of the requirement to file a refund report describing their refund plans. As the *Implementation Order* stated, that report shall include the total amounts of the refunds, the recipients of the refunds, the method of payment, and the method of allocation of the refund among recipients.[7] Should we determine that petitioners' refund plans are inadequate, we reserve the right to require Diamond or Nevada to submit further information. In addition, Diamond and Nevada assume the risk that we will find them subject to a greater refund liability than they have calculated.

6. Accordingly, IT IS ORDERED, that the waiver requested by Diamond State Telephone Company IS GRANTED.

7. IT IS FURTHER ORDERED that the waiver requested by Nevada Bell IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 5 FCC Rcd 412 (1990) (*Implementation Order*).

[2] *Id.* at 413.

[3] Letter from J.M. Lee, Attorney, Diamond State Telephone Co., to Chief, Common Carrier Bureau, dated Feb. 28, 1990.

[4] Letter from S.J. Moore and R. Mitchell, Attorneys, Nevada Bell, to Chief, Common Carrier Bureau, dated Mar. 2, 1990.

[5] *Implementation Order*, 5 FCC Rcd at 418.

[6] *Id.* at 419.

[7] *Id.* at 413.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal Nos. 1936 and 2136

Revisions to Tariff F.C.C. Nos. 2 and 11

ORDER

Adopted: March 2, 1990; Released: March 2, 1990

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) filed Transmittal No. 1936 on November 30, 1989. In this transmittal, AT&T introduces a promotional offering for customers in certain Numbering Plan Areas (NPAs) in Michigan (517 and 616) and Ohio (216, 419, 513, and 614) who order T1.5 Local Channel service, Megacom service, and Megacom 800 service. AT&T proposes to waive various charges for these services for customers who order the promotion. In order to qualify for the offering, customers must order these services and also order the AT&T Megacom 800 service term plan between January 14, 1990 and February 14, 1990 and request installation by March 14, 1990. Under the terms of Transmittal 1936, the promotional offering is limited to customers who demonstrate that they received a proposal from another interexchange carrier (IC) which offered to waive the mileage sensitive charges for a DS1 access facility for as long as the customer subscribed to that carrier's service. LiTel Telecommunications Corporation (LiTel) and US Sprint Communications Company Limited Partnership (Sprint) filed petitions to reject or alternatively suspend and investigate Transmittal 1936 on December 15, 1989. AT&T filed a reply on December 27, 1989.

2. On March 1, 1990, AT&T filed Transmittal No. 2136 by which it proposes: (1) to remove the requirement that customers demonstrate that they have received a similar offer from another IC in order to qualify for the promotion offered under Transmittal 1936; and (2) to change the waiver of the per mile charge for the T1.5 Local Channel to be for a one-month period, instead of for as long as the channel is installed for use with the service arrangement. AT&T has requested and received waiver of Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, in order to permit these revisions to become effective on March 3, 1990, the scheduled effective date of Transmittal 1936.[1]

3. Sprint and LiTel raise similar arguments in their petitions. In sum, they argue that the tariff is unlawful because it is a geographically deaveraged, customer-specific promotional offering. The petitioners also allege that the tariff is unreasonably discriminatory and anticompetitive and therefore, should be rejected. Sprint Petition at 2-5; LiTel Petition at 2-5. In addition, LiTel argues that AT&T's cost support data fail to comply with Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38, and with the Commission's Price Cap Rules. *Id.* at 5-7.

4. In reply, AT&T states that the proposed promotion is not unreasonably discriminatory. AT&T Reply at 3. AT&T also argues that the offering complies with Sections 201(b) and 202(a) of the Act because it is generally available to all customers located in the specified NPAs who meet the terms and conditions of the promotion. *Id.* at 4. Furthermore, AT&T contends that limiting its offering to a specific geographic area does not constitute unreasonable discrimination. *Id.* at 5-6. Finally, AT&T asserts that it has complied with the Commission's Rules regarding cost support data. *Id.* at 7.

5. The Common Carrier Bureau has reviewed the tariff transmittals, the petitions filed by Sprint and LiTel, and AT&T's reply. We conclude that no compelling argument has been presented that the proposed tariff is patently unlawful so as to require rejection, and that no question has been presented that warrants suspension or investigation at this time.

6. Accordingly, IT IS ORDERED that the petitions to reject or alternatively to suspend and investigate Transmittal No. 1936 filed by US Sprint Communications Corporation Limited Partnership and LiTel Telecommunications Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] *See* Letter from Chief, Tariff Division, FCC to CE Link, Administrator, Rates and Tariffs, AT&T.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Matter of the Application of

JACK G. HUBBARD File No. 5837-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service Station on E-group Channels at
South Bend, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1990; Released: March 8, 1990

By the Chief, Domestic Facilities Division:

1. *Introduction*. The above-referenced application of Jack G. Hubbard (Hubbard) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels to serve the South Bend, Indiana area was selected for qualification review as the result of a Commission lottery. Microband Corporation of America (Microband) filed a post-lottery Petition to Deny,[1] challenging the application. Hubbard filed an Opposition to the Petition to Deny.

2. *Pleadings*. In its Petition, Microband alleges that Hubbard, together with eleven other MMDS applicants,[2] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. All twelve of these applicants filed applications for South Bend. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that at least two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Hubbard failed to disclose the identity of the real-parties-in-interest to his application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), and filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), also known as the one-to-a-market rule.

3. In his opposition, Hubbard notes that Microband's Petition to Deny does "not contain a single affidavit in support of [Microband's] petition nor is there any proof or substantive evidence to substantiate [Microband's] allegations." Opposition at 2. Hubbard relies upon his sworn affidavit to support his assertion that he has not violated the real-party-in-interest and one-to-a-market rules.

4. *Discussion*. The Court of Appeals for the District of Columbia Circuit in a recent line of cases clarified and reaffirmed the Commission's statutorily prescribed two-step process for determining the sufficiency of a petition to deny. *See, e.g., Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C.Cir. 1988)(hereinafter cited as *Beaumont*); *Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C.Cir. 1987). It is well established in these cases that in order to obtain an evidentiary hearing, the proponent of a petition to deny must "first set forth specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). Second, if the petition meets these requirements, then and only then, must the Commission determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d)(2). If no substantial or material question of fact is presented, no evidentiary hearing need be held. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985)(hereinafter cited as *Jazz*).

5. The *prima facie* sufficiency determination is to be made on the assumption that the specific facts set forth by the complaining party are true, and without reference to contrary evidence. *Id.* at 397. In other words, the Commission must perform this threshold inquiry on the basis of the petitioner's allegations alone. The Commission is limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988)(hereinafter cited as *Astroline*). In the instant case, Microband alleges the apparent existence of real-party-in-interest rule and one-to-the-market rule violations. After consideration of Microband's allegations, as required under 47 U.S.C. 309(d)(1), we are persuaded that the asserted violations, standing alone, and, if assumed to be true, would sufficiently establish that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that Hubbard failed to disclose the real-parties-in-interest and filed multiple applications would alter the Commission's public interest determination. *Astroline*, 857 F.2d at 1563, 1573; *see, e.g., David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd 2053 (Comm. Car.Bur. 1988); *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 2182 (1987); *Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989).

6. Having found that the petition to deny comports with the requirements enunciated at 47 U.S.C. § 309(d)(1), we now reach the question of the substantiality[3] or materiality of the facts presented as required by Section 309(d)(2). In determining whether an evidentiary hearing is warranted, the Commission considers the totality of the evidence presented (petitioner's evidence and facts offered in rebuttal). Microband's allegations with regard to violations of the real-party-in-interest and one-to-a-market rules are based upon the same circumstances,[4] therefore we will consider them together.

7. The test for determining whether a person is a real-party-in-interest[5] is whether that person has an ownership interest, or is or will be in a position, actually or potentially, to control the operation of the station. *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004, 7008 (1987); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). The one-to-a-market rule prohibits, *inter alia*, the filing of multiple applications.[6] Microband's allegations of rule violations are based upon evidence that "cookie-cutter" applications were filed. However, it has been recognized that applications that are totally unrelated may be similar as a result of the coincidental use of common engineering

and legal consultants.[7] *Thomas Glab*, 5 FCC Rcd 516 (Dom. Fac. Div. 1990). In his Opposition, Hubbard states in rebuttal:

> There were no agreements or understandings existent or under negotiation at the time of the filing of these applications which affected the ownership or control of the proposed facilities, or any right or interest therein by any person not a party to my application. In addition, there are no agreements or understandings regarding ownership or control at this time.

Opposition at 2. We find Microband's unsubstantiated evidence insufficient to establish the existence of a real-party-in-interest violation or a one-to-the-market rule violation in light of Hubbard's rebuttal. *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987); *Virginia Communications, Inc.*, 2 FCC Rcd 1895 (1987).

8. Having carefully considered all the pleadings and the evidence submitted by the parties, we find that Microband's allegations, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, the petition to deny filed by Microband will be denied.

9. *Ordering Clause*. Accordingly, IT IS ORDERED that the Petition to Deny filed by Microband Corporation of America IS HEREBY DENIED. This order is issued pursuant Section 0.291 of the Commission's Rules. 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] In its Petition to Deny, Microband incorporated by reference the pleadings it filed in *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

[2] The eleven other applicants are Warren Ache, Jody Barnes, Edna Cornaggia, Stephanie Engstrom, Thomas Glab, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Sherry Rullman, Steven Rullman, and David Wiechman.

[3] A substantial fact has been defined as a fact for which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Jazz*, 775 F.2d at 395.

[4] Microband argues that an undisclosed real-party-in-interest was the applicant for more than one MMDS application in South Bend. If true, there would exist violations of both of these rules. *David Laustsen and Broadcast Data Corp.*, 3 FCC Rcd at 2054.

[5] Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a), requires that an applicant must fully disclose the real-party-in-interest to the application.

[6] Section 21.901(d)(2) provides:

> The E-group channels will be assigned to a single applicant in each area and the F-group channels will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or the licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[7] We note that Microband failed to submit an affidavit to support its allegations pursuant to 47 U.S.C. § 309(d)(1). And, Microband did not provide the amount of specific facts to substantiate its allegations as provided by Astroline against the Arch transfer application in *Astroline*, 857 F.2d at 1556. A petition to deny "must show the necessary specificity and support; mere conclusory allegations are not suffficient." *Beaumont*, 854 F.2d at 507.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

YAVAPAI	IC-89-05127
TELEPHONE	IC-89-05820
EXCHANGE	IC-89-05827
	IC-89-05967

Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 5, 1990; Released: March 9, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. Several informal complaints have been filed with the Commission pursuant to Section 208 of the Communications Act (Act), 47 U.S.C. §208, and Section 1.716 of the Commission's rules, 47 C.F.R. § 1.716, against Yavapai Telephone Exchange (YTE) and MCI Telecommunications Corporation (MCI) regarding the resale of MCI 800 Service by YTE to its own customers.[1] Complainants alleged that the 800 Service lines that they were leasing from YTE were disconnected without notice. Complainants further alleged that, because of a billing dispute between MCI and YTE, MCI's 800 Service to YTE was suspended by MCI, causing complainants to lose business. Complainants indicate that they first learned of problems with the service when their customers notified them that they could not get through on the 800 numbers. In each complaint case, we sent Notices of Informal Complaint (Notices) directing YTE and MCI to investigate the respective complaints. MCI responded in full to each complaint but YTE failed to respond to any of the notices as required by Section 1.717 of the rules.[2] Based on the facts set forth below, we conclude that YTE has willfully and repeatedly violated Section 1.717 and Section 416(c) of the Act 47 U.S.C. § 416 (c)[3] and is apparently liable for a monetary forfeiture penalty pursuant to Section 503(b) of the Act.[4]

2. The Informal Complaints Branch (Branch) of the Common Carrier Bureau sent Notices to MCI and YTE on behalf of the complainants directing the carriers to investigate the issues raised in the complaints and to report the results of their investigations to the Branch within thirty days of the dates of the Notices. In response to our Notices, MCI reported that it disconnected its provision of 800 Service to YTE for nonpayment of outstanding bills. YTE, on the other hand, failed to respond to any of the Branch's Notices as required by Section 1.717. The Branch also sent letters to YTE via certified mail reciting YTE's obligation to respond to the Commission Notices. The certified letters allowed an additional fifteen days to respond.

The certified letters stated in pertinent part:

> . . . Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Act and 312(b) [of the Act] provides the Commission with authority to order any person to cease and desist from any violation of a rule, regulation or order of the Commission.
>
> Further, failure to comply with an order of the Commission can result in prosecution under Section 401(b) of the Act. Sections 501 and 503(b) provide for forfeiture penalties against any person who willfully fails to follow the directives of the Act or a Commission order . . . .

YTE has failed to respond to the Notices or letters.

3. Set forth below is a listing of complainants' names and file numbers, dates of the Notices and certified letters, and the response due dates. YTE has not responded to any of these Notices or certified letters. The certified receipts were signed by representatives of the company.

(a) Informal complaint filed by *Jim Hearne of Arizona Tours in Sedona, Arizona* (File No. IC-89-05127). Notice of Informal Complaint dated June 29, 1989; YTE response due July 29, 1989. Certified letter dated October 23, 1989; YTE response due date November 7, 1989.

(b) Informal complaint filed by *Joyce Bunch, CTC of The Travel Connection in Prescott, Arizona* (File No. IC-89-05820). Notice of Informal Complaint dated July 5, 1989; YTE response due date August 4, 1989. Certified letter dated November 16, 1989; YTE due date December 1, 1989.

(c) Informal complaint filed by *Arda S. Rutherford of Lucky Seven Transfer and Storage, Inc. in Prescott Valley, Arizona* (File No. IC-89-05827). Notice of Informal Complaint dated July 5, 1989; YTE response due date August 4, 1989. Certified letters to YTE dated November 16, and November 30, 1989; YTE responses due December 1 and December 16, 1989, respectively.

(d) Informal Complaint filed by *Nanci Healey, Owner of Time Expeditions in Sedona, Arizona* (File No. IC-89-05967). Notice of Informal Complaint dated July 25, 1989; YTE's response due August 24, 1989. Certified letter dated October 11, 1989; YTE response due October 26, 1989.

4. Under Section 503(b) of the Act, the Commission is empowered to impose a forfeiture against a person or corporation who has repeatedly failed to comply with any order issued by the Commission under the Act. The record indicates that YTE has willfully and repeatedly violated Section 1.717 of the Commission's rules and Section 416(c) of the Act by failing to respond to Commission Notices and letters.[5] Each failure constitutes a separate violation. Each day that a violation continues is considered a separate offense. Based on the circumstances in this case, the Bureau finds a reasonable basis to order a $1,000 forfeiture for YTE's failure to respond to each of the four Notices of Informal Complaint. Further, it is

appropriate to assess a $1,000 forfeiture for the discrete offenses of not responding to the five certified letters forwarded to YTE and received by its representatives.

5. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Act and authority delegated in Section 0.291 of the Commission's rules, that Yavapai Telephone Exchange is HEREBY NOTIFIED of an apparent liability for forfeiture in the amount of $9,000 for its willful and repeated violations of Section 1.717 of the Commission's rules and Section 416(c) of the Act by failing to respond to the Commission's orders.

6. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, that YTE shall, within thirty (30) days of the release date of this Notice, PAY THE FULL AMOUNT OF THE FORFEITURE OR FILE A RESPONSE showing why the forfeiture should not be imposed or why the proposed forfeiture should be reduced.[6]

7. IT IS FURTHER ORDERED that YTE shall, within 30 days of the release date of this Notice, file written investigation reports for each of the informal complaints cited above in accordance with 47 C.F.R. § 1.717.

8. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, to YTE.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTES

[1] *See* paragraph 4 for a list of complainants.

[2] 47 C.F.R. § 1.717. Section 1.717 provides:

> [t]he Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, the complainant may file a formal complaint in accordance with § 1.721 of the rules.

[3] Section 416(c) requires compliance with Commission orders so long as they remain in effect.

[4] 47 U.S.C. § 503(b). Until December 19, 1989, Section 503(b) provided in pertinent part:

> Any person who is determined by the Commission . . . to have . . . willfully or repeatedly failed to comply with any of the provisions of this Act or any rule, regulation, or order issued by the Commission under this Act . . . shall be liable to the United States for a forfeiture penalty . . . .
>
> (2) The amount of any forfeiture penalty determined under this subsection shall not exceed $2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed-
>
> (A) $20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or
>
> (B) $5,000, in any case not covered by subparagraph (A). The amount of such forfeiture penalty shall be asessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

* * * * *

Effective December 19, 1989, the statute was amended by Public Law Number 101-239 to increase the Commission's forfeiture authority. Section 503(b)(2) now provides:

> (2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount asessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (1) of this subsection.
>
> (B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.
>
> (C) In any case not covered in subparagraph (A) or (B), the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.
>
> (D) The amount of such forfeiture panalty shall be assessed by the Commission, or its designee, by written penalty, the Commission or its designee shall take into

account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

[5] Resellers of interstate services are subject to the Commission's complaints process. *See*, Fourth Report and Order in Competitive Common Carrier proceeding, 95 FCC 2d 554, 576 (1983).

[6] Such a forfeiture amount shall be paid by check or money order drawn to the order of the Federal Communications Commission. The check or money order should be mailed to the Forfeiture Unit, Financial Services Branch, FCC, Box 19209, Washington, D.C. 20036, or delivered to the Forfeiture Unit, Financial Services Branch, Room 452, 1919 M Street, N.W., Washington, D.C. 20554.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of

WTG-WEST, INC., WTG-EAST, INC.,
and WTG-CENTRAL, INC.,
Complainants,

v. File Nos. E-89-298
through E-89-317

THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA, et al.,
Defendants.

ORDER

Adopted: March 5, 1990; Released: March 9, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. In a letter dated February 20, 1990, the complainants in the above-captioned proceedings requested that the Common Carrier Bureau (Bureau) stay these proceedings pending the resolution of the Commission's related tariff investigation in CC Docket No. 85-166, which involves the same basic issues that underlie these complaints. *See Investigation of Special Access Tariffs of Local Exchange Carriers*, Memorandum Opinion and Order, CC Docket No. 85-166, Phase I, FCC 86-52 (released Jan. 24, 1986), *rev'd sub nom. MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988). The Bureau has previously issued orders that held in abeyance other proceedings that, like these, involve Shared Network Facilities Agreements (SNFAs). *See MCI Telecommunications Corp. v. Bell Tel. Co. of Pa.*, 4 FCC Rcd 8227 (1989) (MCI Order); *see also Total Tel USA v. New Jersey Bell Tel. Co.*, 5 FCC Rcd 448 (1990); *RCI Corp. v. Bell Tel. Co. of Pa.*, 5 FCC Rcd 447 (1990); *US Sprint Communications Co. v. Bell Tel. Co. of Pa.*, 5 FCC Rcd 446 (1990); *Clark-Bader, Inc. v. Pacific Bell Tel.*, 4 FCC Rcd 8783 (1989).

2. In response to the complainants' request, we now direct that the above-captioned proceedings be held in abeyance until such future date as will be determined by the Bureau. As stated in the MCI Order, we are cognizant that our present decision conflicts with an earlier Bureau determination that deferring action on SNFA complaints was precluded by the time constraints imposed by the Federal Communications Commission Authorization Act of 1988 (FCCAA), Pub. L. No. 100-594, 102 STAT. 3021 (Nov. 3, 1988). *See Illinois Bell Tel. Co. v. AT&T*, 4 FCC Rcd 2690 (1989). In the MCI Order, however, we reinterpreted the application of the FCCAA to those proceedings based on our conclusion that the time constraints imposed thereby did not mechanically apply in that set of cases. Consistent with the MCI Order, we also hold the above-captioned proceedings in abeyance. We intend to resume action on these complaints immediately following resolution of the tariff investigation in CC Docket No. 85-166.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the above-captioned proceedings be held in abeyance pending further Commission action.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ROBERTS CELLULAR, INC. File No. 54792-CL-P-199-A-86

For a construction authorization to establish a new cellular system to operate on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Steubenville-Weirton, Ohio-West Virginia Metropolitan Statistical Area (MSA)

JACKSON CELLULAR, INC. File No. 49336-CL-P-207-A-86

For a construction authorization to establish a new cellular system to operate on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Jackson, Michigan (MSA)

PROFFITT CELLULAR COMMUNICATIONS, INC. File No. 53044-CL-P-221-A-86

For a construction authorization to establish a new cellular system to operate on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Fargo, North Dakota/Moorhead, Minnesota MSA

MEMORANDUM OPINION AND ORDER

Adopted: March 2, 1990; Released: March 9, 1990

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. This proceeding involves the captioned applications filed in three cellular markets in the cellular filing group for Metropolitan Statistical Areas (MSAs) 181-240. In the Steubenville-Wierton, Ohio-West Virginia MSA (Steubenville, Ohio MSA), John M. Roberts (Roberts) was the winner of the lottery and was subsequently announced as tentative selectee.[1] On December 19, 1986, Mr. Roberts amended his application to reflect a *pro forma* change in ownership from an individual to a new corporation, Roberts Cellular, Inc. (Roberts Cellular), whose stock is 100% owned and controlled by Mr. Roberts. In the Jackson, Michigan MSA (Jackson MSA), John T. Else (Else) was the lottery winner and was subsequently announced as tentative selectee.[2] On January 28, 1987, Mr. Else amended his applications to reflect a *pro forma* change in ownership from an individual to a new corporation, Jackson Cellular, Inc. (Jackson Cellular), whose stock is 100% owned and controlled by Mr. Else. In the Fargo-Moorhead, North Dakota-Minnesota MSA (Fargo MSA), Zelma Proffitt (Proffitt) was the winner of the lottery and was subsequently announced as tentative selectee.[3] On February 24, 1987, Ms. Proffitt amended her application to reflect a *pro forma* change in ownership from an individual to a new corporation, Proffitt Cellular Communications, Inc. (Proffitt Cellular), whose stock is 100% owned and controlled by Ms. Proffitt. For the reasons stated below, these applications are being dismissed.

II. BACKGROUND

2. During the course of initial review of the applications of lottery winners and tentative selectees in MSAs 181-240, the Mobile Services Division (MSD) discovered that over 100 applicants from or near Crossville, Tennessee had filed applications in this group of cellular markets. In 12 of these markets, such applicants were the lottery winners. The MSD discovered that all of the Crossville-related applications appeared to be mass-marketed cellular applications that included common engineering exhibits prepared by Satellite Systems Engineering, Inc. (SSE). The MSD further discovered that all of these applications had been distributed to the applicants by a Mr. Thomas Looney, an attorney from Crossville, Tennessee. Based upon the large number of applications from Crossville-related applicants in these MSAs, obtained from the same source, the MSD became concerned that there had been an attempt to skew the lotteries in these MSAs.

3. While the Commission had determined that it would not consider mass marketed applications *per se* unacceptable, it cautioned applicants that mere lottery tickets would not be acceptable for filing and that:

> If a significant and material issue exists regarding the sincerity of a tentative selectee's commitment or ability to provide high quality cellular service as a Commission licensee or if there are other reasons to question whether the public interest would be served by a grant, [the Commission has] the authority to designate the application for evidentiary hearing to resolve such issues.

Cellular Lottery Rule Making, 98 FCC 2d 175 (1984). Moreover, the Commission emphasized its intent to scrutinize carefully "any application which appears to be directed toward skewing the lottery or giving an individual or group control, or the opportunity to obtain control, over more than one mutually exclusive application." 58 Rad. Reg. 2d (P&F) at 693 and note 68. *See* Section 22.921 (b).

4. For the above reasons, the MSD initiated a preliminary investigation to ascertain the circumstances under which these applications has been filed. On May 28, 1987, the MSD sent out letters to the 12 Crossville-related tentative selectees stating that it had information that these

tentative selectees, including those for the captioned applications, might not be the real parties in interest behind their applications. The MSD sought additional information on the circumstances surrounding the filing of their applications and whether they were parties to any agreements transferring a controlling interest in their applications to Thomas Looney, or to individuals or groups associated with him, contrary to Sections 22.13 (a) and 22.913 of the rules.[4] The MSD received responses from 10 of these tentative selectees, including Roberts Cellular, Jackson Cellular, and Proffitt Cellular on or about June 18, 1987.[5] In these responses, Mr. Roberts, Mr. Else, and Ms. Proffitt stated that their applications for the captioned MSAs had been prepared by Mr. Thomas Looney of Crossville, Tennessee. They further stated that they had not paid Mr. Looney for their applications, but that they expected to pay him an unspecified fee at a later point. Additionally, they stated that after they filed their applications, they were notified by SSE that it had prepared the engineering portions of their applications in connection with the filing of other cellular applications and that SSE objected to the use of these engineering exhibits, including the designated cell sites, without its authorization, in their applications. Accordingly, they stated that Mr. Looney, acting on their behalf, made a $3,000 payment from his law firm's trust account to SSE in settlement of SSE's claims concerning the use of its engineering exhibits. The applicants further stated that these payments occurred in December, 1986, approximately six months after the applicants filed their applications.[6]

5. On June 18, 1987, the Commission announced that it was conducting an investigation into the tentative selectees in the Crossville-related MSAs. *Public Notice*, No. FCC 87-219, 2 FCC Rcd 3958 (1987). The Commission also announced that it was suspending the *ex parte* rules in the proceedings relating to these markets.[7] As a result, the Commission did not have to disclose any communications made to it in connection with its investigation. On July 20, 1987, McLang Company (McLang), the second ranked applicant in the Steubenville, Ohio MSA, filed a Petition for Reconsideration of the June 18, 1987 Public Notice. In its petition, McLang objected to the suspension of the *ex parte* rules. The Commission stated in denying McLang's petition that the suspension would remain in effect throughout the course of its investigation. *John M. Roberts*, 3 FCC Rcd 371 (1988), *petition for review dismissed sub nom. McLang Co. v. FCC*, No. 88-1192 (D.C. Cir., July 29, 1988).

6. On April 7, 1988, Masters Cellular, the third ranked applicant in the Benton Harbor, Michigan MSA, filed a Petition to Dismiss or Deny directed against David W. Coffey, the tentative selectee in that market, and Jackie Jones, the second ranked applicant, alleging that they were not sincere, independent applicants. Masters Cellular contended that Coffey and Jones were part of a massive filing scheme that was centered in the Crossville, Tennessee area and put together to skew the lottery in favor of a few individuals, namely Thomas Looney, Dean Bennett, Mike Miller, and Ed "Mac" Johnson.

7. On February 16, 1989, the Commission announced that it had received amendments requesting dismissal of applications in eight of the Crossville related MSAs,[8] in which the applications of tentative selectees were pending. *Public Notice*, Report No. CL-89-90 (released February 16, 1989). The Public Notice also listed applications of applicants who were Crossville-related and ranked successively below the tentative selectees in these MSAs. These applicants had filed letters seeking to dismiss their applications. On March 14, 1989, the Commission dismissed all of these applications and named the next ranked applicants as the new tentative selectees. *Public Notice*, Report No. CL-89-106 (released March 14, 1989).[9] Subsequently, the Commission awarded construction authorizations in 11 of the 14 Crossville-related MSAs. The applications in the three remaining MSAs, Roberts Cellular (Steubenville MSA), Jackson Cellular (Jackson MSA), and Proffitt Cellular (Fargo MSA), are the subject of this order. In addition, Roberts Cellular and Proffitt Cellular have filed requests for Special Temporary Authority (STA) for immediated authority to construct and operate their cellular systems in order to alleviate the headstart of the wireline carriers in their MSAs. Opposition and supplementary pleadings have been filed in response.

III. PENDING CROSSVILLE - RELATED TENTATIVE SELECTEES

A. Steubenville, Ohio MSA - Roberts Cellular, Inc.

8. On August 8, 1988, McLang, the second ranked applicant in the Steubenville MSA, filed a Motion to Consolidate for Hearing (Hearing Motion) all of the applications of pending Crossville-related tentative selectees. The Commission announced the filing of McLang's Hearing Motion and requested that all interested parties file comments. *Public Notice*, Report No. CL-88-146, (released August 15, 1988). On April 7, 1989, McLang Company requested that its hearing Motion dated August 8, 1988 apply only to Roberts Cellular in the Steubenville MSA.

9. In its Hearing Motion, McLang states that it has learned from the trade press that the Commission has initiated an investigation of lottery winners from the Crossville, Tennessee area, including Roberts Cellular. McLang refers to trade press reports that this Commission action was focusing on whether Thomas Looney orchestrated the filing of 7,000 cellular applications by 90 Crossville residents who had filed applications, and that Federal investigators had been sent to Crossville to ascertain whether Mr. Looney was an undisclosed party in interest in those applications, citing Communications Daily, April 15, 1987, at 5. McLang further notes a petition that was filed by Masters Cellular in the Benton Harbor MSA proceeding, *see* para. 6, *supra*, alleging that (1) Crossville applicants were part of a "massive scheme to skew" cellular lotteries; (2) that 5,000 applications from Crossville were filed, representing 25 % of the applications filed in some lotteries, and that none of the applicants joined settlement groups; (3) that Mr. Looney gave away cellular applications worth $500,000; and (4) that at least one unnamed Crossville-related applicant admitted that there was a "tacit understanding" giving an unnamed application preparer a financial interest in his application. In light of these allegations McLang submits that the Crossville applications should be designated for hearing.[10]

10. McLang further contends that by sending investigators to Crossville, Tennessee, the Commission has demonstrated that it lacked sufficient evidence to act on the application of Roberts Cellular, thus triggering the hearing requirement of Section 309 (e) of the Communications Act that establishes the statutory framework within

which the Commission must conduct its cellular licensing proceedings. *See e.g., Gencom, Inc. v. FCC*, 832 F. 2d 171 (D.C. Cir. 1987). In addition, McLang asserts that the Commission's duty to protect the integrity of its cellular lottery processes at a time when allegations are eroding public confidence in these processes, provides a public policy basis for designating these applications for hearing. McLang contends that all of the evidence obtained by the Commission should be made public and released to the parties before the hearing process commences. McLang asserts that the pendency of the investigation by the Department of Justice should not bar the release of this material.

11. In a Supplement to Petition for Grant of an STA, filed November 16, 1988, *see* para. 7, *supra*, Mr. Roberts submits that the record shows no evidence that warrants designating its application for hearing. Mr. Roberts asserts that McLang has raised no facts adversely bearing on his qualifications to be a Commission licensee and that, in contrast to the speculation made by newspaper reports referred to by McLang, Mr. Roberts confirmed in response to the MSD's May 28, 1987 letter that there were no agreements, oral or written, express or implied, between Mr. Roberts and anyone else for the payment of fees or other consideration for his application. Mr. Roberts disputes McLang's assertions that the hearing requirement is triggered here.

12. In McLang's opposition to Supplement of Roberts Cellular, McLang contends that the Supplement is essentially a response to McLang's August 8, 1988 Hearing Motion, for which the Commission set a deadline of September 15, 1988 to respond,[11] and is, therefore, late filed.

B. Jackson, Michigan MSA - Jackson Cellular

13. On September 15, 1988, Jackson Cellular filed Comments opposing McLang's Hearing Motion. Jackson Cellular contends that Section 309(e) of the Act does not require a hearing and that its application should not be designated. Jackson Cellular also asserts that no valid "public policy" interest would in fact be advanced by designating Jackson Cellular's application for hearing. Jackson Cellular states that it had no involvement in any plan to disseminate cellular applications or skew the lottery and never acted in concert with other applicants.[12] Therefore, submits Jackson Cellular, there is no basis for a real party in interest issue common to all of the applications, and a consolidated hearing is not warranted.

14. On June 2, 1989, Jackson Cellular filed a Section 1.65 amendment disclosing that it had recently granted an option to Crowley Cellular Telecommunications I (Crowley Cellular) to acquire Mr. Else's interest in Jackson Cellular after the grant of a construction authorization.

15. On July 28, 1989, Cellutech, the third ranked selectee in the Jackson MSA, filed a Petition to Dismiss or Deny, or, Alternatively, Petition to Designate Application for Hearing directed against Jackson Cellular. Cellutech first asserts that Mr. Else is inextricably linked to the Crossville filing scheme because his application for the Jackson MSA shows that Mr. Else's address is in Toledo, Iowa, and documentation previously filed in another unnamed Crossville-related market reveals that five applications related to the Crossville applications submitted by Mr. Looney were filed by applicants either from Toledo or the nearby town of Tama, Iowa. The fact that all these applicants, including Mr. Else, are from the same area, asserts Cellutech, requires that the Commission examine Mr. Else's relationship to these other applicants and the circumstances under which these applicants filed. Second, alleges Cellutech, there is an apparent relationship between Mr. Else and Millard V. Oakley, an attorney from Livingston, Tennessee, near Crossville, that raises a question concerning Mr. Else's connection to the other applications in the Jackson MSA. Cellutech submits that Mr. Oakley, who had also filed applications in the Jackson MSA and other Crossville-related MSAs, contacted it on October 1, 1987. Further, Cellutech submits a letter indicating that Mr. Oakley offered Cellutech $200,000 and an interest in the non-wireline cellular system in the Jackson MSA if Cellutech signed a settlement agreement with Mr. Else as well as David Coffey, who was the second ranked applicant in the Jackson MSA and the first ranked applicant in the Benton Harbor MSA, *see* para. 6, *supra*. According to Cellutech, Mr. Oakley stated that he was authorized to discuss settlement on behalf of Mr. Else and Mr. Coffey and that they had agreed to enter into a settlement agreement with Cellutech in the Jackson MSA. These negotiations by Mr. Oakley, argues Cellutech, indicate that Mr. Oakley had a pre-lottery interest in Jackson Cellular's application and Mr. Coffey's application in the Jackson MSA, in addition to his own application, in violation of 22.921 (b).

16. Cellutech further asserts that Mr. Else did not have a reasonable assurance of site availability at the time he filed his application. Cellutech submits that Mr. Else's application reveals that the engineering exhibits submitted with his application was prepared by SSE, and alleges that Mr. Looney obtained the engineering exhibits from Mr. Early D. Monroe, who was not authorized by SSE to distribute the engineering exhibits to Mr. Looney. Cellutech contends that based on these circumstances, it is clear that Mr. Else merely submitted generic engineering exhibits with his application and did not have a specific reasonable assurance of site availability at the time he filed his application as required by Section 22.15 of the rules.

17. In response to Cellutech's petition, Jackson Cellular contends that Mr. Else had no part in any plan to manipulate lottery procedures. Mr. Else declares that he has no knowledge of the Oakley-Cellutech discussions and that he never authorized Oakley to act on his behalf in any capacity. Jackson Cellular also submits the Declaration of Mr. Oakley, in which Mr. Oakley states that he acknowledges the October, 1987 contacts with Cellutech's principal, but that he never stated that he was authorized to discuss settlement on behalf of Mr. Else or that Mr. Else and Mr. Coffey had agreed to make a deal, and that he has never represented Mr. Else in any capacity.

18. Jackson Cellular also contends that Cellutech's allegation of no site availability is based on a private contractual dispute among Mr. Looney, Mr. Monroe, and SSE, over compensation for SSE's engineering, and that this private dispute is neither relevant nor material to the issue of whether Mr. Else had reasonable assurance of the availability of the cell site in his application. Mr. Else states that he relied upon his application preparer, Mr. Thomas Looney, to select an antenna site. Mr. Else further states that he entered into a settlement agreement with SSE on December 19, 1986 to resolve the dispute. Jackson Cellular notes that the site specified in its application was available for use as an antenna site at the

time the application was filed, and that an amendment which it filed May 12, 1989, includes a letter from the site owner reaffirming the availability of the cell site.

19. Crowley Cellular, the holder of an option interest in Jackson Cellular, filed Comments on Cellutech's petition, alleging that Cellutech was making unfounded allegations concerning settlement negotiations that included Cellutech, Jackson Cellular and Crowley Cellular solely for the purpose of driving up the price that Crowley Cellular would have to pay to exercise its option to purchase the Jackson non-wireline cellular system.

C. Fargo, North Dakota MSA - Proffitt Communications

20. On September 15, 1988, U.S. Cellular, the third ranked selectee in the Fargo MSA lottery, filed Comments supporting McLang's Hearing Motion. U.S. Cellular contends that material issues of fact do exist for designating the applications, including Ms. Proffitt's, for hearing. U.S. Cellular also requests that the application of the second ranked applicant in the Fargo MSA, Jackie Jones, who is a resident of Crossville, Tennessee, be consolidated into the hearing in the event the McLang Motion is granted. U.S. Cellular incorporates by reference the April 7, 1988 Masters Cellular petition in its entirety. *See* para. 6, *supra*. First, U.S. Cellular contends that Master Cellular's allegations against David Coffey and Jackie Jones in the Benton Harbor, Michigan MSA are equally applicable to Proffitt Cellular and Jackie Jones in the Fargo MSA.[13] Second, U.S. Cellular contends that an issue should be added as to whether Thomas Looney is the real party in interest behind Proffitt Cellular. Third, U.S. Cellular contends that since Ms. Proffitt's application gave no indication of a connection between Mr. Looney and herself, a misrepresentation issue against Ms. Proffitt should be designated for hearing. U.S. Cellular asserts, fourth, that Ms. Proffitt let the financing commitment from her equipment vendor expire and that a financial qualifications issue should be designated.

21. On January 26, 1989, counsel for Proffitt Cellular sent a letter to the Commission on behalf of Proffitt Cellular, saying that Ms. Proffitt had reached an understanding with an undisclosed party concerning the possible acquisition of the Fargo authorization. On February 7, 1989, Proffitt Cellular filed Comments to McLang's Hearing Motion, which included responses to U.S. Cellular's Comments. Proffitt Cellular contends that the press reports and Commission public notices referred to by McLang, as well as its speculative assertions, are not sufficient to warrant a hearing with regard to any of the applications.

22. On February 17, 1989, U.S. Cellular filed a Request for Designating Additional Hearing Issues regarding Ms. Proffitt's and Mr. Jones' applications in the Fargo MSA. U.S. Cellular alleges that Ms. Proffitt had failed to disclose that she granted an option interest in her application to Cellular Technology, Inc. (CTI) and thus has failed to comply with Sections 22.13 (a)(1)(iii) and 1.65 of the rules. Kenneth Horowitz, the president of U.S. Cellular, states that representatives of CTI had informed him that CTI had acquired an interest in the application of Proffitt Cellular on or about December 12, 1988. Because it has presented a *prima facie* case of failure to disclose a significant change in Proffitt Cellular's application, U.S. Cellular argues that a misrepresentation issue should be designated. U.S. Cellular also asserts that based upon the information given by CTI's representatives to Horowitz, Ms. Proffitt apparently has relinquished decision-making responsibility over her application that has resulted in a substantial change in beneficial ownership or control in her application. Therefore, contends U.S. Cellular, the application of Proffitt Cellular has been amended by major amendment, should be considered newly filed under Sections 22.23 (c)(4) and 22.23 (g) of the Commission's rules, and, therefore, the application should be dismissed under the cut off rules. The undisclosed interest of CTI in Proffitt Cellular and Ms. Proffitt's evident speculative intent, says U.S. Cellular, also raises issues of whether Ms. Proffitt is a *bona fide* applicant and whether she is engaged in trafficking in Commission licenses.

23. On March 2, 1989, Proffitt Cellular filed an opposition to U.S. Cellular's request and submitted information regarding the option she had granted to CTI. Ms. Proffitt says that she had entered into an agreement with CTI and that she advised the Commission of that agreement in her counsel's January 26, 1989 letter.[14] Ms. Proffitt asserts that she did not believe that a copy of her agreement needed to be filed because her agreement does not give CTI any present ownership interest in the applicant. Ms. Proffitt contends that by this letter, she has substantially complied with Section 1.65. Ms. Proffitt submitted a copy of the agreement for *in camera* inspection by the Commission because a confidentiality clause in the agreement precludes her from making the entire agreement public. The agreement, contends Ms. Proffitt, demonstrates that U.S. Cellular's contentions are erroneous.

24. Subsequently, on December 22, 1989, U.S. Cellular filed a Supplement to Request for Designation of Additional Hearing Issues. U.S. Cellular submits that it has uncovered significant new evidence which establishes that Ms. Proffitt and Mr. Jones participated in an application filing scheme centered in Crossville, Tennessee. U.S. Cellular's evidence is based on the interviews and information conducted and gathered by Henderson Hillin, Jr., a private investigator retained by U.S. Cellular. Hillin's Declaration, which is submitted with U.S. Cellular's Supplemental Request, contains signed and sworn statements by Nick Proffitt, ex-husband of Ms. Proffitt, and Estelle Marie Billings Diaz, an applicant from Crossville who filed applications for several MSAs. Based on their statements and other statements which Hillin represents that he obtained from interviews with other applicants from Crossville, U.S. Cellular alleges that Ms. Proffitt, along with other applicants from or near Crossville, entered into "Financial Agreements" with a group of investors, which included Dean Bennett, Millard V. Oakley, Mike Miller, Edward M. "Mac" Johnson, and Thomas Looney. In addition, U.S. Cellular submits the statement of Ms. Billings Diaz that she had worked for Dean Bennett at the time the Crossville-related applications were prepared and filed, and that she signed a pre-filing agreement with Mr. Bennett and Mr. Johnson that she believes gave a 90% ownership interest in her application to them in the event she won a lottery. Ms. Billings Diaz states that she saw many Crossville-related applicants, including Jackie Jones, sign such an agreement, and that she saw Ms. Proffitt's signature on such an agreement. The Billings Diaz statement relates that Proffitt "looked after" the agreements in the office of Bennett and Johnson. U.S. Cellular contends that this evidence contradicts Proffitt's prior representations that she is the sole party in interest to her application. Therefore, U.S. Cellular argues that Ms. Proffitt has engaged in misrepresentation and that the issues of real

party in interest, misrepresentation, and false certification must now be set for hearing. U.S. Cellular also contends that the same conclusion must be reached in regard to the second ranked applicant, Jackie Jones, and that he must be made a party to the hearing.

25. In addition, in its December 22, 1989 Supplemental Request, U.S. Cellular refers to an agreement between Ms. Proffitt and Mr. Oakley, that was submitted by Mr. Oakley on June 2, 1987, to the Commission. Based on this agreement, says U.S. Cellular, in which Ms. Proffitt transferred 40% of the existing stock in Proffitt Cellular to Mr. Oakley, while retaining 60% for herself, it appears that Mr. Oakley is vested with day to day control over Proffitt Cellular. U.S. Cellular alleges that this agreement is an attempt by Mr. Oakley and Ms. Proffitt to conceal the existence of the pre-filing agreement in which it believes Ms. Proffitt participated. U.S. Cellular asserts that it is apparent that the Oakley-Proffitt agreement is still in effect because a December 15, 1989 letter from Ms. Proffitt's counsel indicates that he is communicating directly to Mr. Oakley regarding matters concerning Ms. Proffitt's application.

26. U.S. Cellular further alleges that this transfer of stock from Ms. Proffitt to Mr. Oakley in June, 1987 cannot be reconciled with Ms. Proffitt's statement in March, 1989 that she is the sole stockholder of Proffitt Cellular, and that therefore, a question of lack of candor on her part is raised. In addition, in regard to the CTI agreement, U.S. Cellular reasserts that the agreement indicates that CTI has acquired a present contractual interest based on the right to purchase all of Proffitt Cellular's assets. The amount of $190,000 paid by CTI to Proffitt, of which $100,000 is non-refundable, maintains U.S. Cellular, is sufficiently large, along with other clauses in the agreement, to show that Proffitt has relinquished control over her application to CTI.

27. On February 12, 1990, Proffitt Cellular filed a Notice of Intent to Respond to U.S. Cellular's Supplemental Request requesting additional time to respond.[15]

D. Evidence from Other Crossville - related MSAs

28. In addition to the above described allegations, the Commission also has before it specific allegations relating to the issue of reasonable assurance of site availability in the captioned applications. This issue was raised in the proceedings involving the applications of the non-wireline applicants in the Richland, Washington MSA. Patricia Guy Mahaffey, a lower ranked applicant in the lottery for that MSA filed a supplementary pleading to a Petition to Dismiss or Deny the application of the tentative selectee, L.E. Smith, that alleged that he did not have reasonable assurance of site availability. The pleading alleged that the application filed by Mr. Smith as well as other Crossville-related tentative selectees, including the tentative selectees in the captioned applications, contained engineering exhibits and site availability assurances that were compiled by SSE and that SSE sold this part of the applications to Early D. Monroe, who in turn, sold them to Mr. Thomas Looney. The evidence submitted by Ms. Mahaffey with the petition consists of: (1) the agreement between Mr. Monroe and SSE, whereby SSE provided him with the engineering exhibits necessary for him to file his own applications in specified markets, and (2) the affidavit of SSE's Vice President (Robert A. Napoletano), stating that SSE never authorized Mr. Monroe to allow any of SSE's application materials to be used by any other person on any terms whatsoever. Both documents were filed with the court in which SSE sued Mr. Monroe for, *inter alia*, breach of contract, which ended with a default judgment entered against Mr. Monroe.[16] This evidence, states Ms. Mahaffey, demonstrates that Mr. Monroe was not authorized to distribute or sell SSE's engineering to Mr. Looney.

IV. DISCUSSION

29. After thoroughly considering all of the pleadings and the record evidence, we find that the three tentative selectees herein have failed to demonstrate that they obtained reasonable assurance of their proposed site availability as required by Section 22.15 (a)(1) of the rules. Since we are dismissing their applications on this ground, we find that it would be unnecessarily duplicative to designate real party in interest, misrepresentation, and transfer of control issues for hearing.[17]

A. Site Availability and Certification

30. An applicant, not its agent or the firm preparing its application, is entirely responsible for the contents of its application.[18] In selecting a cell site, applicants are required to take affirmative steps to obtain reasonable assurance from the site owner that the site is available.[19] The Bureau has determined previously that where applicants or their agents have not contacted the site owners and obtained a reasonable assurance of site availability prior to the time of filing the application, those applications are defective and must be dismissed. *Onyx Cellular Corporation*, 3 FCC Rcd 4856 (Com. Car. Bur. 1988); *CPS Telecom, Inc.*, 2 FCC Rcd 4060 (Mob. Serv. Div. 1987).[20] It is undisputed that the applicants in the three captioned markets filed applications prepared by Mr. Looney. It is also undisputed that it was SSE or its agents, and not Mr. Looney or the applicants, who contacted the owners of the proposed cell sites and received assurances of site availability as part of the engineering exhibits that it prepared and sold to Mr. Monroe. Furthermore, it is undisputed that Mr. Monroe was not authorized to sell this information to Mr. Looney. It is clear therefore, that neither SSE nor Mr. Monroe were the agents of the subject applicants at the time that they filed their applications.

31. Consequently, based on the facts as admitted by the applicants, we find that neither Mr. Roberts, Mr. Else, and Ms. Proffitt, or their agents, contacted the site owners and received a reasonable assurance that the sites were available prior to the filing of their applications. Given that the applicant must bear responsibility for the acts and omissions of its agent, Mr. Roberts, Mr. Else, and Ms. Proffitt are accountable for their and Mr Looney's failure to contact the site owners. While we recognize that, as indicated by the responses and declarations, these applicants may not have known that Mr. Looney failed to contact the site owners at the time they signed and filed their applications, the applicants are responsible for their agent's failure to obtain a reasonable assurance of site availability prior to filing their applications.[21]

32. Moreover, we find that Jackson Cellular's May 12, 1989 amendment, including a declaration of the owner of its proposed cell site that the site is still available as of the filing of the amendment, is not relevant to whether it had a reasonable assurance of site availability at the time of filing its application. Reasonable assurance is required at

the time of filing the application, *see Onyx*, *supra*. Moreover, lack of such assurance of site availability at that time is not the kind of defect that can be cured by an amendment, *see REM Communication*, 3 FCC Rcd 3705 (1988); and the captioned applications must be dismissed as defective pursuant to Section 22.20 of our Rules.[22]

B. Need for Evidentiary Hearing

33. We find that the dismissal of these applications rather than designation for hearing conforms with Commission rules and case law regarding hearing procedures. At the outset, we note that a hearing is not required when, as in the case at hand, an application is dismissed as defective. Under Section 309 of the Act, the Commission must designate an application for hearing if it determines that allegations against an applicant demand further inquiry. Specifically, we must determine whether, based on the application, the pleadings or other matters of which we officially may take notice, a substantial and material question of fact is presented. *Citizens for Jazz on WRVR v. FCC*, 775 F. 2d 392 (D.C. Cir. 1985). In dismissing these applications, we rely on on all of the evidence of record and the applicants' own statements.

34. In *Tel - Page Corporation, Memorandum Opinion and Order*, 91 FCC 2d 1007, 1010-1011 (1982) (*Tel - Page)*, we stated "[w]here . . . a defect is overlooked at prescreening . . . and the defect is discovered subsequently during processing, these applications will be returned as unacceptable for filing." As we stated in *Tel - Page*, *supra* at 1010, n.5:

> The purpose of a hearing is to resolve disputed questions of fact. There is no requirement for a hearing where, as is the case here, all the material facts are undisputed and it is plain that an application patently violates the Commission's valid, substantive requirements for grant. In these circumstances, a hearing would only delay the initiation of service without any countervailing public interest benefits.

35. In this case, the evidence is undisputed that neither Mr. Roberts, Mr. Else, and Ms. Proffitt, nor their agent, had a reasonable assurance of site availability at the time their applications were filed. Given that no material questions of fact remain to be resolved on this issue, an evidentiary hearing on the issue of site availability is unwarranted.[23]

V. ORDERING CLAUSES

36. WHEREFORE, for the foregoing reason, IT IS ORDERED that the following applications ARE DISMISSED:

> Roberts Cellular, Inc., File No. 54792-CL-P-199-A-86, for the Steubenville-Weirton, Ohio-West Virginia MSA;
>
> Jackson Cellular, Inc, File No. 49336-CL-P-207-A-86, for the the Jackson, Michigan MSA;
>
> Proffitt Cellular Communications, File No. 53044-CL-P-221-A-86, for the Fargo, North Dakota/Moorhead, Minnesota MSA.

37. IT IS FURTHER ORDERED, that the Requests for Special Temporary Authority, filed by Roberts Cellular, Inc. and Proffitt Cellular Communications, ARE DENIED.

38. This Order is issued under Section 0.291 of the Commission's rules and is effective on its release date. *See* 47 C.F.R. Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Public Notice, Report No. CL-87-61 (released November 20, 1986).

[2] Public Notice, Report No. CL-87-100 (released December 16, 1986).

[3] Public Notice, Report No. CL-87-142 (released January 23, 1987).

[4] Section 22.13 (a) provides that "[e]ach application for a radio station authorization . . . shall: (1) disclose fully the real party or parties in interest, that are engaged in the Public Mobile Services, ..."

Section 22.913 (a)(10), in effect at the time the captioned applicants filed their applications, required:

> [a]n exhibit setting forth the information required by Section 22.13 (a)(1). In addition, all applicants other than publicly traded corporations must disclose parties with any ownership interest in another cellular application for the same market.

[5] Two of the original 12 Crossville-related tentative selectees dismissed their applications, pursuant to settlements with lower ranked applicants. These tentative selectees were JLB Comco, Inc. in the Boise, Idaho MSA, (Boise MSA) and Flick Communications, Inc. in the Waterloo-Cedar Falls, Iowa MSA (Waterloo MSA). Subsequently, two other Crossville related applicants became tentative selectees in MSA 214, Richland-Kennewick-Pasco, Washington MSA (Richland MSA), and MSA 219, Monroe, Louisiana MSA (Monroe MSA). In both these MSAs, the original tentative selectees' applications were dismissed for reasons unrelated to the Crossville investigation.

[6] The responses of Mr. Roberts, Mr. Else, and Ms. Proffitt are now available in the files for the respective three MSAs in the Commission's Cellular Public Reference Room, Rm. 219, 1919 M Street, N.W., Washington, D.C. 20554.

[7] *See* 47 C.F.R. §1.1208 *et seq*.

[8] As noted in note 5, *supra*, the tentative selectees in the Boise MSA and Waterloo MSA had previously dismissed their applications. Subsequently, the tentative selectee in the Monroe MSA requested dismissal of its application, and the amendment requesting dismissal was included in the February 16, 1989 Public Notice as one of the 8 Crossville related tentative selectees requesting dismissal of their applications.

[9] The tentative selectee in the Richland MSA filed for dismissal of its application at a later date. *See* Public Notice, Report No. CL-89-281 (released September 21, 1989).

[10] McLang also contends that a hearing is warranted because in a similar situation, the Bureau designated eight other applications in MSAs 241-305 for hearing. *See* Theodore Jones, 3 FCC Rcd 3555 (1988).

[11] *See* Public Notice, Report No. CL-88-146 (August 15, 1988).

[12] This proceeding, contends Jackson Cellular, is distinguishable from *Jones, supra*. In *Jones, supra*, 3 FCC Rcd at 3559, Jackson Cellular states that the Bureau believed that a pattern of concerted actions taken by various applicants whose applications had been prepared by Peter Lewis, a consulting engineer. Jackson Cellular submits that all of Lewis' customers who won a lottery entered into a consulting agreement with him, retained the same legal counsel, and filed virtually identical Section 1.65 amendments. *Id.* No such concerted actions occurred in this case, argues Jackson Cellular.

[13] *See* Petition filed by Masters Cellular, *supra* at paras. 6 and 9.

[14] *See* para. 21, *supra*.

[15] Because we find it unnecessary to resolve the allegations in U.S. Cellular's Supplemental Request in this proceeding, *see* paragraph 29, *infra*, we decline to grant Proffitt Cellular additional time to respond to those allegations.

[16] SSE's Plaintiff's Motion for Judgment by Default in Civil Action No. 86-3342 (U.S.D.C.), filed February 27, 1987.

[17] Moreover, we find that Roberts Cellular and Proffitt Cellular have not presented any extraordinary circumstances which would justify the grant to them of special temporary authority to construct and operate cellular systems in their respective MSAs. Accordingly, their requests for such authority are denied. *See* Section 22.25 of the Rules.

[18] *See* Lorain Community Broadcasting Co., 18 FCC 2d 686 (1969) (applicant, not communications counsel, must be held responsible for compliance with the rules). Bruce M. Schorsten, 2 FCC Rcd 5421 (Com. Car. Bur. 1987) (applicant's reliance on advice of the "preparer" of the cellular application does not justify failure to comply with the Commission's rules because applicant is responsible for the application's contents). Advanced Business Communications, Inc., 2 FCC Rcd 3751 (Mob. Serv. Div. 1987) (although cellular application was prepared by a firm engaged for this purpose, the applicant is completely responsible for the information conveyed in its application).

[19] Charles Mitchell Dant, 2 FCC Rcd 5584 (Mob. Serv. Div. 1987), *aff'd*, 3 FCC Rcd 950 (1988).

[20] In *CPS Telecom, Inc.* the MSD found that neither the cellular applicant nor its agent had contacted the site owner or its representative before filing the application and, therefore, dismissed the application for lack of a reasonable assurance of site availability. CPS Telecom, Inc., 2 FCC Rcd at 4060.

Belief by an applicant that he has acted in good faith, such as relying on the representation of his agent, is not tantamount to a demonstration of reasonable assurance where no actual contact with the site owner or its representative has been made. Cf. Millard V. Oakley, 42 Rad. Reg. 2d (P & F) 1495 (1978) (the applicant, prior to filing his application for a broadcast station, relied on statements to his partner by a real estate broker that the broker believed that property [for site] was available and that he could handle the sale; the Commission declined to designate the site availability issue for hearing); Robert and Patricia Gardner, 2 FCC Rcd 1928 (Mob. Serv. Div. 1987), *aff'd*, Order on Reconsideration, 2 FCC Rcd 4686 (Com. Car. Bur. 1987) (Bureau held that, if an applicant accepts the representations of an individual apparently in a position to know the availability of a tower, then the applicant did not act unreasonably, and its assertion of reasonable assurance of site availability is made in good faith); Charles Mitchell Dant, *supra*, (the applicant based his certification as to reasonable assurance of site availability on representations made by the landowner, but was unaware that the construction of a tower would be prohibited by restrictions in the deeds of the property). In all these cases there was evidence of contact between the site owner and the applicant or his agent. In the instant proceeding, since Mr. Monroe had no right under his agreement with SSE to sell the engineering exhibits, including any assurances concerning cell site availability, to Mr. Looney, he could not give reasonable assurance of site availability.

[21] It is well-established that a mere belief that the site will be available is not reasonable assurance. William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1974); Cannon Communications Corporation, 101 FCC 2d 169, 173 (Rev. Bd. 1985).

[22] Based on the foregoing, we further find that Mr. Roberts, Mr. Else, and Ms. Proffitt falsely certified in Form 401, Schedule B, Item No. 34 of their applications, that they had a reasonable assurance of cell site availability.

[23] *See generally* United States v. FCC, 652 F. 2d 72 (D.C. Cir. 1980); Marsh v. FCC, 436 F. 2d 132 (D.C. Cir. 1970); Gencom, Inc. v. FCC, 832 F. 2d 171 (D.C. Cir. 1987); U.S. v. Storer Broadcasting Co., 351 U.S. 192 (1956).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Commission Requirements
for Cost Support Material
To Be Filed with 1990 Annual
Access Tariffs

ORDER

Adopted: February 26, 1990; Released: February 26, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This Order sets forth certain requirements for summary cost support material that local exchange carriers (LECs) must file to support their annual access charge tariff filings on or before April 2, 1990[1] in partial fulfillment of the requirements established in Section 61.38 of the Commission's Rules.[2] Specific data formats are detailed in the Tariff Review Plan (TRP), and are appended to this Order.[3] The TRPs display basic cost and demand information in a manner that is consistent for all LECs, thereby aiding review by the Commission and interested parties of the LECs' required annual access tariff filings. The TRPs have served this purpose effectively in past years.

A. Background

2. The background concerning the development of previous TRPs can be found in our previous TRP Orders.[4] Based on our continued experience in reviewing the LECs' interstate access tariffs and in evaluating the usefulness of the TRP data provided by the LECs in previous filings, and based on various changes in the Commission's Rules and other changes,[5] it is necessary to modify last year's information requirements in certain respects. These modifications were developed after informal discussions with representatives of the LECs and other members of the industry and after comments on improvements and modifications to the 1989 TRP were requested from all interested parties.[6]

B. Definition of Tier 1 and Tier 2 Companies

3. As we have noted in previous TRP Orders, the LECs' ability to provide cost, demand, and revenue data varies depending on the size of the company.[7] In those Orders, we divided the LECs into two categories, Tier 1 operating companies and Tier 2 operating companies, and devised a different set of summary data requirements for each. Tier 1 companies were defined as those companies having $100 million or more in total company annual regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B Telephone Companies for the Year 1983. Tier 2 companies were defined as companies having total company annual regulated revenue less than $100 million and that file their own access tariffs with the Commission.

4. As we indicated in the *1989 TRP Order*,[8] we are slightly altering our definitions of Tier 1 and Tier 2 companies. For purposes of this year's TRP, we are applying the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules use to distinguish Class A and Class B companies to distinguish Tier 1 and Tier 2 companies. Class A companies, and thus Tier 1 companies, are those companies having annual revenues from regulated telecommunications operations of $100 million or more; Class B companies, and thus Tier 2 companies, are those companies having annual revenues from regulated telecommunications operations of less than $100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. Subsequent changes in classification are made when annual operating revenue shows a greater or lesser classification for five consecutive years. A list of Tier 1 companies is included in Attachment A.

5. In the *1989 TRP Order*, we distinguished smaller Tier 2 LECs from the larger Tier 2 LECs by applying the definition of small telephone company study areas adopted in the *Small Telephone Company Order*.[9] We then adopted different TRPs and different test years for the larger Tier 2 companies and the small telephone companies. For purposes of this Order, small telephone companies are differentiated as in the *1989 TRP Order*. Thus, small telephone companies, denoted Tier 2B companies, are those Tier 2 companies which are in National Exchange Carrier Association (NECA) Subset 3 and which serve 50,000 or fewer access lines.[10] All other Tier 2 companies are Tier 2A.[11] As before, only companies that do not concur in the NECA traffic sensitive tariff are required to file TRPs.

C. Definition of Test Year and Past Year Cost of Service Period

6. The Commission's Rules require that carriers which are not small telephone companies must submit, in support of their proposed rate changes, a past year cost of service (PYCOS) study for the most recent 12-month period and a study projecting costs for a representative 12-month period (test year).[12] Those rules also require that access rates be targetted to earn the authorized annual rate of return.[13] In the present case, the rates filed to be effective July 1, 1990, will be expected to remain in effect through June 30, 1991.[14] As we indicated in the *1989 TRP Order*, we are adopting the period July 1, 1990, through June 30, 1991, as the test year for Tier 1 and Tier 2A LECs. For the purpose of the 1990 annual access tariff filings, we also direct Tier 1 and Tier 2A LECs to submit data for the period January 1, 1989, through December 31, 1989, as PYCOS data. As we discuss below, NECA must also use this PYCOS period. All ratemaking must be based upon test year projections, except for small telephone companies, as noted below.

7. We are establishing optional cost support requirements for Tier 2B telephone companies. The *Small Telephone Company Order* allowed small telephone companies to file access tariffs every other year, using the following optional cost support and ratemaking methods for tariffs effective on, or subsequent to, January 1, 1989: (1) a company must compute rates, for the first access filing, based on a "cost of service study for all elements

for the most recent 12-month period with related demand for the same period", and for subsequent access filings, based on a "cost of service study for all elements for the total period since the local exchange carrier's last filing, with related demand for the same period";[15] (2) cost support need not be submitted with the filing; and (3) the Commission may require a company to submit such support information.

8. For the purpose of the 1990 annual access tariff filing, small telephone companies may elect to make no filing. Companies which elect this option will have to compute their access rates for the 1991 annual access tariff filng based on a cost of service study for the entire period since their 1989 annual access tariff filings. Such companies need not submit their supporting data at the time of their filing, but should be prepared to submit the data promptly upon request by the Commission or interested parties.[16] Small telephone companies may also elect to make a filing this year based on either an historical or prospective test year. Small telephone companies that choose to use an historical period for the test year must use data for January 1, 1989, through December 31, 1989. Small telephone companies also have the option of adopting the test period and PYCOS period required of the larger telephone companies in this Order. We exercise our discretion pursuant to Sections 61.38(a) and 69.39(a) and direct small telephone companies which elect to use a prospective test year to accompany their 1990 annual access tariff filing with the cost support data required by this Order for Tier 2A companies.[17]

II. TIER 1 TARIFF REVIEW PLAN

9. The TRP requirements have evolved over time, based on the experience of the Commission and other parties in using the TRPs to evaluate the annual filings and of the LECs in preparing them. In many ways, the Tier 1 TRP charts are similar to the 1989 TRP. Based in part on the suggestions contained in the responses to the *November 28 Public Notice*, certain changes have been made to the Tier 1 TRP. These changes involve elimination of unneeded or obsolete requirements and the addition of requirements that will substantially improve the Commission's ability to evaluate the reasonableness of proposed rates. These new requirements have been carefully framed to place the smallest possible burden on the LECs, while allowing us to evaluate the reasonableness of rates filed by the carriers. In the following paragraphs, we discuss the most important changes in TRP requirements.

A. Cost Charts (COS)

10. The 1989 TRP added certain requirements for cost data that the Bureau found were necessary for the proper evaluation of rates: (1) detailed charts of historical and prospective cost allocations similar to charts in Appendix C and Appendix D of the *ARMIS Order;* and (2) the addition of an input file to a summary model of Parts 36 and 69 (SESAME) that had been developed by the Commission. Charts COS7 and COS8 contained the detailed cost allocation requirements described in (1) above, and Chart COS6 contained the SESAME input file described in (2) above. These charts replaced the 1988 TRP requirement that Access Charge Analysis System (ACAS) or ACAS-like data be filed.[18]

11. The data required by these charts proved valuable in our analysis of the rates filed in the 1989 annual access tariff filing. Provision of this data allowed us to avoid burdensome and time-consuming investigations that were necessary in the 1988 annual access tariff filing. The data proved so valuable, in fact, that certain of the data required to be reported on these charts but not required by the ARMIS reports were incorporated into the ARMIS reports, on reconsideration.[19]

12. The automated system of reports adopted under ARMIS consists of four reports: The Quarterly Report (Report 43-01),[20] which provides aggregate quarterly financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36, and 69; The USOA Report (Report 43-02),[21] which shows annual data for every account prescribed in Part 32, the Uniform System of Accounts; the Joint Cost Report (Report 43-03),[22] which shows allocations of annual costs between regulated and nonregulated activities as required by Part 64; and The Access Report (Report 43-04),[23] which shows the results of the jurisdictional separations and access charge rules as prescribed in Parts 36 and 69, respectively. These four ARMIS reports are filed in mechanized and printed form.

13. The historical data required by the April 2, 1990, ARMIS filings in Charts 43-03 and 43-04 reflect the same time period (calendar year 1989) as that adopted in this Order for use as the PYCOS period for the 1990 annual access tariff filings. Since the data required by these ARMIS charts is substantially the same as the data required by Charts COS-6(H), COS-7(H), and COS-8(H) in the 1989 TRP, and since this data provides adequate historical financial information concerning the LECs' operations during the PYCOS period, in order to reduce the LECs' reporting burdens, we will use information that the LECs provide in compliance with the April 1, 1990, ARMIS filing requirement for Charts 43-03 and 43-04[24] in place of the data formerly contained in Charts COS-6(H), COS-7(H), and COS-8(H) in the 1989 TRP. Further, we are adopting the formats of ARMIS Charts 43-03 and 43-04 for the provision of detailed prospective (test year) cost data that was formerly contained in Charts COS-6(P), COS-7(P), and COS-8(P) in the 1989 TRP.[25]

14. A summary of important cost chart changes is as follows:

(1) *Chart COS-1:* The format for this summary cost chart is replaced by that of ARMIS 43-01. Since there may be out of period adjustments to the quarterly data reported in ARMIS in this chart, we cannot use the data filed in ARMIS. Therefore, companies must provide annual data for 1989 in the historical version of this chart, and data for the test year in the prospective version.

(2) *Chart COS-2:* This chart provides total company and interstate time series cost data. In the 1989 TRP, some companies apparently reported their historical data including inside wire and settlements expenses in the Expense Less Depreciation (ELD) line of this chart, while their forecasts excluded these amounts. We need to obtain actual and forecast data in which these expenses are treated consistently, and therefore are requiring the companies to file data which excludes inside wire and settlements expenses for both historical and prospective time periods. Companies should exclude all expenses, both regulated and non-regulated, associated with inside wire, including maintenance, depreciation, and amortization. Companies should also exclude those settlement expenses which are

access expenses (Account 6540) paid to another company. To ensure that the historical time periods exclude such expenses, all companies should refile historical data from 1986 forward for inclusion in the 1989 TRP.

(3) *Chart COS-3:* This chart displays the impacts of major rules changes and other changes. Various items for which estimates of cost impacts are required have been updated.

(4) *Chart COS-4:* This chart is the "report card" for the 1987, 1988, and 1989 test years. The comparison of forecasts and actuals for the last three quarters of 1989, annualized, is added. In addition, companies must report calendar 1989 data. The data on this chart is used to assess the accuracy of the companies' forecasts. On this chart in the 1989 annual access tariff filing, certain companies reported their forecasts on one basis, but their actuals on another.[26] Such inconsistent treatment renders direct comparison of forecasts and actuals impossible. The forecasts reported on this chart must be those reported in previous TRPs. Companies must ensure that the actuals reported for each period on this chart are on the same basis and include the same accounts as the forecast for that period. Consistent with our policy in the *1989 TRP Order*, we will not credit "report card" data which indicates a company has grossly under-forecast its actuals, because we will presume that the actuals are not on the same basis as the forecasts (contrary to the instructions for this chart), unless the company fully explains the reason for the underforecast.

(5) *Chart COS-5:* This chart provides data on equal access, and is unchanged, except for updating the time periods.

(6) *Chart COS-6:* This chart is a new chart and is a prospective version of ARMIS Report 43-03. Historical data in the same format is provided by ARMIS Report 43-03.

(7) *Chart COS-7:* This chart is a new chart and is a prospective version of ARMIS Report 43-04. Historical data in the same format is provided by ARMIS Report 43-04.

B. Depreciation Chart (DEP)

(1) *Chart DEP-1:* Chart DEP is unchanged from the 1989 TRP, except that the PYCOS period and test year are updated and column R, row 510, must be populated.

C. Demand Charts (DMD)

15. The 1990 TRP eliminates certain Chart DMD requirements contained in the 1989 TRP in accordance with commenters' suggestions and our experience with the 1989 TRP. Specifically, for the reasons discussed below, it eliminates all data prior to October 1986 for Chart DMD-1, prior to 1988 for Chart DMD-2, and prior to 1987 for Chart DMD-5. It also eliminates the requirement to file service-specific factors which were reported on Chart DMD-1 in the 1989 TRP.

16. Other important demand chart changes are:

(1) *Chart DMD-1:* This chart involves time series of Common Line (CL) and Traffic Sensitive (TS) minute of use (MOU) data. Data provided on this chart in previous annual access tariff filings is subject to revision for out-of-period adjustments for two years. In the 1989 TRP companies reported data on this chart through September 1988. Therefore, data from October 1986 forward needs to be provided again this year to ensure the data reflects all out-of-period adjustments. Access MOU factors, which provided percentages of Carrier Common Line (CCL) MOU in the various services (MTS, WATS, 800) did not prove to be useful and need not be provided this year. Companies must also provide LEC interexchange CCL MOU, in addition to AT&T minutes in order to assess more accurately the significance of AT&T's market share.

(2) *Chart DMD-2:* Chart DMD-2 is unchanged from the 1988 TRP except for the elimination of the requirement to file pre-1988 data. Data prior to 1988 was filed in the 1989 TRP and it is our understanding that the data is not subject to revision.

(3) *Chart DMD-3:* This chart in the 1990 TRP is a "report card" for the 1987, 1988, and 1989 test years. This chart requires the provision of demand forecasts for 1987, 1988, and 1989 test years from Chart DMD-3 of the 1987, 1988, and 1989 TRPs, respectively, and the actual demand in 1987 and 1988, the annualized demand for the last three quarters of 1989, and calendar 1989 demand. Chart DMD-3 compares the forecasts from these filings to the actual demand that occurred in those years. In addition, it compares forecast demand for the period July 1, 1990, through June 30, 1991, to the actual demand for 1989.

(4) *Chart DMD-4:* Chart DMD-4 requires the provision of special access demand data. Historical special access demand for channel terminations, interoffice mileage, and circuits is provided on a monthly basis (end-of-period) beginning with January 1987 for the total industry. As in the 1989 TRP, each LEC must provide a definition of services included in wideband.

(5) *Chart DMD-5:* This chart is unchanged from the 1989 TRP except for elimination of the requirement to file pre-1987 data. Data for periods prior to 1987 is not subject to revision, has been provided in previous TRPs, and need not be submitted again this year.

D. Chart RTE

17. The RTE charts require the provision of (1) rate comparisons; and (2) revenue comparisons ("price-outs") under different rate assumptions. These charts permit the calculation of percentage changes in rates for entire rate categories. Comparisons should be made at the tariff level at which current rates are filed, not the tariff level at which 1990-91 rates are filed. In addition, another chart, RTE-4, is being added this year, which lists tariff entities for each Part 69 category for which rates are averaged. This data is necessary to determine more accurately how possible adjustments, suspensions, or investigations would affect companies' rates.

(1) *Chart RTE-1:* Rates must be provided by access element rather than by Part 65 category. Thus companies must file Residence and Single Line Business end user charges, Multi-Line Business end user charges, and CCL, Switching, Local Transport, Information, and Equal Access rates, rather than only CCL and TS rates. Such disaggregation is necessary to the extent that refund calculations for rates subject to investigation are made on an access element rather than Part 65 category basis.

(2) *Chart RTE-2:* This chart is updated to reflect current rates.

(3) *Chart RTE-3:* Chart RTE-3 displays access price-out comparisons, and is updated to reflect current rates. Using projected test year demand and proposed rates versus rates in effect in 1989, revenues and revenue comparisons are calculated for End User, Carrier Common Line, Switching, Local Transport, Information, Equal Access, and Special Access. Such disaggregation is necessary in order to

assess the magnitude of refunds calculated for rates subject to investigation, since refunds may be made on an access element. Nonrecurring charges should also be included in all price-outs.

(4) *Chart RTE-4:* In this chart, companies list the companies with which they have pooled or averaged rates, for the following: Multiline Business, Residence and Single Line Business, Carrier Common Line, Switching, Local Transport, Information, Equal Access, and Special Access. Each holding company shall create one chart for all its companies, and that chart must be included in each company's TRP. The companies listed should be all companies for which the costs and demand are combined to compute the rates in the above categories, not all companies which have the same rates in the above categories. This information will enable the Bureau readily to identify all tariff entities affected by adjustments made by the Commission.

E. Chart ERN

18. This chart is unchanged from last year, except for updating the time periods reported. This chart shows earnings at the current level of aggregation.

F. Chart REV

19. This chart is unchanged, except that it updates the PYCOS and test year periods.

G. Chart SEP

20. This is a new chart which lists, by Part 69 elements and sub-elements, the change in 1990 revenue requirement due to the introduction of new basic studies which LECs propose to implement in the test year. Basic studies are used by the LECs to develop separations factors to allocate costs to the state and interstate jurisdictions. To the extent LECs introduce these new basic studies in the prospective period, their forecast costs are not comparable to their historical costs. Therefore, provision of this data will enable us to evaluate more accurately changes in costs between prospective and PYCOS periods.

H. Miscellaneous

21. We wish to clarify how companies must report settlement revenue from shared facilities in their TRPs. The demand and revenue requirement, on both a prospective and historical basis, must be included in the data filed by the company filing the tariff for the shared facility and excluded from the data filed by the company that does not file a tariff for the facility.

22. The Networks request that we require the LECs to provide in the TRP written notice of plans to reduce or discontinue transmission service.[27] We are unpersuaded that this is necessary to allow us to evaluate LEC access rates properly. If there is any need to address the extent to which such notice is necessary or desirable, it should be done in a separate proceeding.

23. In their comments, Ad Hoc, ICA, and IDCMA request that we require the LECs to file special access category unit revenue requirements by rate element.[28] The parties state this data has been provided in the past by many LECs in their cost support. The Commission has not adopted a method to be used for computing unit revenue requirements for special access rate elements as part of its rules. The Bureau has traditionally set forth TRP cost support requirements at a level of detail commensurate with the Commission's cost allocation rules. Therefore, inclusion of data in the TRP which details allocation procedures not prescribed by the Commission's rules is not appropriate at this time. LECs should continue to provide this data in the cost support accompanying the TRPs.

III. TIER 2 TARIFF REVIEW PLAN

24. In this section we outline the requirements for Tier 2 companies. Attachment C of this Order provides the charts and documentation for the Tier 2 TRP. Based in part on the suggestions contained in the responses to the *November 28 Public Notice*, certain changes have been made to the Tier 2 TRP. These requirements have been adopted with a view toward minimizing the filing burdens of smaller companies and giving due weight to the concerns these companies have expressed regarding their ability to comply with the TRP data filing requirements.

25. In previous years, we have adopted slightly different TRPs for the Tier 2A and the Tier 2B companies, requiring less detailed data from the Tier 2B companies. This year, we conclude that a single TRP for both the Tier 2A and the Tier 2B companies would not be burdensome. Having only one version of the Tier 2 TRP would also simplify our analysis of the annual access tariff filings. Therefore, we are adopting one TRP for both the Tier 2A companies and those Tier 2B companies which choose to file using a prospective test year. The requirements for those Tier 2B companies which choose to use an historical test year are given in Section I.C, *supra*.

26. Chart T2COS-1, both historical and prospective, is an update of T2COS-1 from the 1989 Tier 2 TRP. We request that all Tier 2 companies which file prospectively also file Charts COS-6 and COS-7 in the Tier 1 TRP, although we do not require them to do so. This information will enable us to better evaluate the reasonableness of their rates. The Tier 2 Chart DEP is the same as Chart DEP in the Tier 1 TRP. However, only those Tier 2 carriers whose depreciation rates are prescribed by the Commission are required to file the T2DEP chart. Charts T2DMD-1, T2DMD-2, and T2DMD-3 are updates of the 1989 Tier 2 Charts T2DMD-1, T2DMD-2, and T2DMD-3. As in the 1989 annual access tariff filing, the DMD charts for Tier 2 companies reflect billed rather than normalized demand. The Charts RTE, ERN, and REV are essentially the same as in the Tier 1 TRP. Similarly, "report cards" for cost and demand forecasting, Charts COS-2 and DMD-4 in Attachment C, are required.

IV. NECA

27. We do not detail specific summary data requirements for NECA in this Order. As discussed below, we request the USTA Task Force to aggregate much of the TRP data for Tier 1 LECs and Tier 2 LECs. This data, in aggregate form, should be useful for evaluation of the reasonableness of NECA's proposed common line rates. The level of detail contained in the Tier 1 plans should provide guidance to NECA in formulating the summary data for the common line pool that it should include in its filing.

28. NECA's traffic sensitive pool consists of hundreds of small companies. For those companies, it would be difficult to provide the detail required by the Tier 1 TRPs. Therefore, we refrain from requiring that NECA provide

traffic sensitive summary data as required by the Tier 1 plan. The level of detail required by the Tier 2 plan should provide guidance to NECA in formulating the summary data that it should include with its filing. The fact that we refrain from requiring specific summary data from NECA for its common line and traffic sensitive pools does not exempt NECA from providing support data in complete compliance with Section 61.38 of the Commission's Rules.

29. We require NECA to provide Chart ERN for the historical and prospective periods. In Chart COS-1, NECA will need to include a line for settlements from its average schedule companies, which it entered as a negative amount in the row for miscellaneous CL revenue last year. We also require that NECA provide detailed cost support data concerning long term and transitional support calculations.

V. GENERAL INSTRUCTIONS

30. The following general instructions apply to both Tier 1 LECs and Tier 2 LECs. Except for the section entitled "Geographic Aggregation", the following general instructions also apply to NECA.

A. Errata

31. As we have noted in the past, the submission of incorrect cost suport data and the subsequent filing of errata seriously detract from the ability of the Commission and interested parties to evaluate the reasonableness of rates within the notice period.[29] In previous TRP Orders, we required that any erratum be accompanied by a request for special permission to permit the transmittal to take effect on the originally scheduled effective date. Further, we required that, if such a request were refused, it would be required that proposed rates supported by the erratum be refiled upon adequate notice, regardless of whether these rates differ from the rates as originally filed. We continue to believe that the special permission requirement is a reasonable means of encouraging improvement in the quality of data submitted in the annual access filings. We also believe it facilitates the tariff review process.

32. We continue to require that carriers file a request for special permission with any erratum that is filed to correct errors or otherwise revise their access tariff support data. If such a request is refused, the carrier must refile the proposed rates that are supported by the erratum, regardless of whether these rates differ from the rates as originally proposed. These requirements pertain to all data filed in support of access charges, including all data that is required by the TRP. All TRP data must be filed on April 2, 1990, and must be accurate and complete.

33. In the 1989 tariff filing, fewer errata were filed than in previous filings. However, even though this was the case, a significant number of errata filings were submitted as late as March 2, 1989. For the 1990 annual access tariff filing, we may specify an early cut-off date for errata if it appears this will again occur. Carriers who discover errors after the cut-off will then be required to refile their tariffs with a later effective date. We also remind carriers, however, that they are under a legal obligation to correct any erroneous data discovered in the TRP or other cost support data.

B. Certification

34. NECA and the LECs must certify the accuracy of historical and test year data that is submitted in support of rates by including a signed statement that the support data is true, correct, and complete. Certification is required for all data submitted in support of revised rates, including all data that is required by the TRP. The text of the certification is the same as that adopted in the *1987 Waiver Order* [30] and the *1988 TRP Order*. The certification should be displayed as the last page in the binder containing each company's TRP.

C. Geographic Aggregation

35. Except for Charts RTE and ERN, all information required by the TRP must be displayed on the level of geographic aggregation to which the particular LEC's 1990-91 rates pertain. Charts RTE and ERN must pertain to the current, not proposed, level of aggregation, as explained above. In addition, if the tariff rates are based on data from a number of study areas or operating companies, levels of aggregation associated with each study area (state) and operating company should be provided (except for Charts RTE, ERN, and REV). Carriers need not aggregate the data above the tariff filing level.

D. Assistance from USTA

36. In order that the Commission and interested parties may evaluate the national impact of proposed rates, we request that the USTA Task Force provide an aggregation of all Tier 1 data (except for charts for which aggregation is inappropriate) and Tier 2 TRP data in both hardcopy and disk format.[31]

E. Waivers

37. If carriers find that they are unable to provide data required by the TRP, they may file applications for waiver. These waiver applications must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. If a carrier determines, however, that it will be unable to meet these requirements, it must file an application for waiver with the Commission no later than March 5, 1990. Oppositions to applications for waiver shall be filed not later than March 9, 1990. Each carrier requesting any waiver of the requirements of this Order or of any other Commission Rule or Order applicable to the 1990 annual access tariff filings shall include all such requests in this single application. Carriers should not delay undertaking development of data required by the 1990 TRP in anticipation that waiver requests will be granted.

38. In previous annual access tariff filings, commenters have requested that carriers be allowed to file data under proprietary protection. As in previous years, we are not persuaded that any data required by the 1990 TRP, including associated 1989 ARMIS data, requires proprietary protection.

F. Technical Requirements

39. Tier 1 and Tier 2A companies, and those Tier 2B companies which file using a prospective test year, are required to file their TRPs in computerized form. We provided notice in the 1988 TRP that the smaller Tier 2

companies would have to file mechanized data for the 1989 annual access tariff filing, but waived that requirement in 1989 as overly burdensome. It is our understanding from discussions with industry representatives that all Tier 2 companies can now provide the data in mechanized format. Therefore, all companies which file a TRP must provide the data in computerized form.

40. The Tier 1 historical versions of Charts COS-6 and COS-7 need not be provided in computerized form, since those versions will have been filed on April 2, 1990, as part of the companies' ARMIS reports. The prospective versions of these charts, however, must be filed in computerized form with the TRP. "Hard copy" printed versions of both the historical and prospective versions of Charts COS-1, COS-6, and COS-7 must be included in the TRP and should be aggregated to the tariff entity level.

G. Compliance with the Paperwork Reduction Act

41. In compliance with the Paperwork Reduction Act, we estimate burden-hours and place the OMB form number and date on the formats included with this Order. We also note that this TRP was developed after informal discussions with LECs and other industry representatives and comments filed in response to our *November 28 Public Notice*. By adoption of this Order, we are minimizing the burden on the LECs by several means. This Order deletes obsolete requirements and other requirements which have not proved useful. We note, especially, that we do not require the filing of some historical data which has been filed in previous years, and that carriers will not have to provide access MOU factors on DMD-1. These changes should substantially lessen the burden compared to the 1989 annual access filings. We are relying on data filed in ARMIS for much of the historical cost data, and are requiring that the prospective cost data be filed in a format patterned after the ARMIS filing. We continue to require significantly less data from the smaller LECs, and have thereby reduced the burden of TRP data requirements for many Tier 2 companies. We note that we are not requiring Chart T2DEP from carriers whose depreciation rate is not set by the Commission. While we require additional data, especially in Charts RTE-4 and SEP-1, this data should improve the ability of the Commission to evaluate rates and thereby avoid further requests for data.

VI. CONCLUSION; PROCEDURAL REQUIREMENTS

42. This Order will be sent directly to all carriers that will file their own access tariffs on April 2, 1990, and a copy will also be sent to NECA. A copy of the Order and all attachments will be available for inspection at the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. While the Commission will distribute copies of the main text of this Order, those parties wishing to obtain copies of Attachments B and C can do so only through the Commission's contractor for public records duplication, International Transcription Service, 2100 M Street, N.W., Washington, D.C. 20037, (202) 857-3800.

43. Each company should submit its TRP separately from other portions of its tariff filing. Each TRP should be filed in a separate Volume 1-2 accompanying Volume 1 of the Description and Justification. Each TRP should be arranged by study area rather than by chart. Each company should provide an extra copy of the TRP to the Accounting and Audits Division, Suite 812, 2000 L Street, N.W., Washington, D.C. 20036 on or before April 2, 1990. The Commission will provide further details regarding the procedures applicable to the April 2 tariff filing in a future release.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Access Tariff Filing Schedules, CC Docket No. 88-326, FCC 88-283, Report and Order, released Sept. 14, 1988 (*Tariff Filing Deferral Order*).

[2] 47 C.F.R. § 61.38. Compliance with the requirements set forth in this Order does not ensure acceptance of carriers' access charge tariffs or replace total cost support material requirements. Carriers remain obligated to provide adequate cost support for their access charges. For instance, LECs should note additional cost support requirements outlined in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the Commission's Rules), CC Docket No. 86-182, DA 88-809, released May 31, 1988, at paras. 3-4.

In this Order, we are not adopting a Tariff Review Plan for use under a price caps regulatory system. The Commission has proposed significant changes in the standard by which access rates, among others, should be evaluated, in the Report and Order and Second Further Notice of Proposed Rule Making, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 4 FCC Rcd 2873 (1989). Final action in that docket will not occur before the scheduled April 2 filing date and thus will not affect review of these annual access tariff filings.

[3] The TRPs should be associated with the calendar year in which the tariffs will become effective. Thus, the TRPs discussed in this Order, which will accompany the April 2, 1990, access tariff filings scheduled to become effective on July 1, 1990, will be referred to as the 1990 TRPs.

[4] *See* Commission Requirements for Cost Support Material To Be Filed with Access Tariffs on October 3, 1986, Mimeo No. 6356, released Aug. 15, 1986 (*1987 TRP Order*); Commission Requirements for Cost Support Material To Be Filed with 1988 Annual Access Tariffs, Mimeo No. 4219, released July 30, 1987 (*1988 TRP Order*); Commission Requirements for Cost Support Material To Be Filed with 1989 Annual Access Tariffs, 4 FCC Rcd 1662 (1989) (*1989 TRP Order*).

[5] *See, e.g.*, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the Commission's Rules), Order, CC Docket No. 86-182, 4 FCC Rcd 4239 (1989) (*ARMIS Order*); *Tariff Filing Deferral Order*.

[6] *See* Common Carrier Bureau Solicits Comments Regarding Modifications and Improvements to the Tariff Review Plan, DA 89-1513, Public Notice, Mimeo No. 740, Nov. 28, 1989 (*November 28 Public Notice*). Comments in response to our *November 28 Public Notice* were filed on December 12, 1989, by Ad Hoc Telecommunications Users Committee (Ad Hoc), Allnet Communication Services, Inc. (Allnet), American Telephone and Telegraph Company (AT&T), International Communications Association (ICA), MCI Communications Corporation (MCI), Michigan Public Service Commission Staff (Michigan PSC),

Capital Cities/ABC, Inc., CBS, Inc., and National Broadcasting Company, Inc. (Networks), United Telecommunications Inc. (United), US Sprint Communications Company Limited Partnership (US Sprint), and United States Telephone Association (USTA). In addition, the Independent Data Communications Manufacturers Association, Inc. (IDCMA) filed a letter on December 19, 1989, in support of the comments of ICA and Ad Hoc.

[7] *See* Commission Requirements for Cost Support Material To Be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133, released Jan. 25, 1985 (*January 25 Public Notice*).

[8] *See 1989 TRP Order* at para. 11.

[9] Regulation of Small Telephone Companies, CC Docket No. 86-467, FCC 87-186, released June 29, 1987, *recon. pending* (*Small Telephone Company Order*). *See* also 47 C.F.R. §§ 61.39(a) and (b), 69.602.

[10] *See* 47 C.F.R. § 69.602 for a definition of the subsets that vote separately for NECA directors.

[11] Actions in pending proceedings might affect tier classifications in subsequent filings. Petitions for reconsideration of the *Small Telephone Company Order* have been filed by Alltel Corporation, Century Telephone Enterprises, Contel Corporation, CP National Corporation, Telephone and Data Systems, Inc., and the United States Telephone Association, and an application for review of the *1988 TRP Order* has been filed by Alltel Corporation. In its Letter from Counsel, Alltel Corporation to Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, dated December 22, 1987, Alltel Corporation raised the same issue, in the context of the Paperwork Reduction Act, that it and the other petitioners raised in their petitions for reconsideration before the Commission.

[12] *See* 47 C.F.R. § 61.38(b)(1).

[13] *See* 47 C.F.R. §§ 69.2(b) and (z).

[14] The Commission has stated its intention to institute price caps for the LECs effective January 1, 1991. *See* FCC Press Release, Report No. DC-1532, released Dec. 21, 1989, and the attached statement of Chairman Alfred C. Sikes. If adjustments to the rates are necessary due to implementation of price caps, they will be made at that time. We are unpersuaded by the comments of United that a simplified tariff update filing would be more appropriate in light of the pending implementation of price caps for the LECs.

[15] 47 C.F.R. §§ 61.39(b)(1)(i) and (ii).

[16] *See* 47 C.F.R. § 61.39(b).

[17] Some companies which, on their own, would qualify as Tier 2B companies are classified as Tier 2A companies because they are affiliated with companies that are NECA Subset 2 or that have study areas of greater than 50,000 access lines. Companies which would be Tier 2B but for such affiliation must use a prospective test year and furnish PYCOS data for calendar 1989.

[18] *See* Annual 1988 Access Tariff Filing Petitions for Waiver, Memorandum Opinion and Order, DA 87-1269, released Sept. 3, 1987, at para. 39.

[19] *See ARMIS Order*.

[20] The format for this Report was adopted in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), Order, CC Docket No. 86-182, 4 FCC Rcd 973 (1989).

[21] The format for this Report was adopted in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), Order, CC Docket No. 86-182, 4 FCC Rcd 906 (1989); Errata, CC Docket No. 86-182, 4 FCC Rcd 1815 (1989).

[22] The format for this Report was adopted in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), Order, CC Docket No. 86-182, 4 FCC Rcd 1040 (1989); Errata, CC Docket No. 86-182, 4 FCC Rcd 1815 (1989).

[23] The format for this Report was adopted in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), Order, CC Docket No. 86-182, 4 FCC Rcd 4239 (1989).

[24] Since ARMIS chart 43-01 requires historical quarterly data rather than calendar year 1989 data, the data is not useful as PYCOS data. We have modified, however, the format of the 1990 TRP Charts COS-1(H) and COS-1(P) to conform to that of ARMIS Chart 43-01.

[25] We note that there are currently under consideration revisions to the ARMIS reports. The version of these reports which the carriers will be required to file in ARMIS is the version which must be used for the TRP.

[26] For instance, settlements were included in actuals, but not in forecasts.

[27] Networks Comments at 1-3.

[28] ICA Comments at 5; Ad Hoc Comments at 2-3; IDCMA Comments at 2-3.

[29] *See 1987 TRP Order* at para. 17; *1988 TRP Order* at para. 24; 1989 TRP *Order* at para. 37.

[30] *See* Annual 1987 Acess Tariff Filings, Petitions for Waivers of Filing Requirements, Memorandum Opinion and Order, Mimeo No. 6945, released Sept. 16, 1986 *(1987 Waiver Order)*.

[31] Except for information relating to percentages or factors, no data entries for which there is incomplete information should be aggregated. Aggregations of incomplete data should be noted.

Attachment A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)
	)
Commission Requirements	)
for Cost Support Material	)
To Be Filed with 1990 Annual	)
Access Tariffs	)

ORDER

DIVESTED BOC INDEX

HOLDING COMPANY	OPERATING COMPANY	STUDY AREA	STUDY AREA CODE
AMERITECH			AMTR
	1. ILLINOIS BELL	- ILLINOIS	LBIL
	2. INDIANA BELL	- INDIANA	NBIN
	3. MICHIGAN BELL	- MICHIGAN	MBMI
	4. OHIO BELL	- OHIO	OBOH
	5. WISCONSIN BELL	- WISCONSIN	WTWI
BELL ATLANTIC			BATR
	1. CHESAPEAKE AND POTOMAC		CPTC
		- DIST. OF COLUMBIA	CDDC
		- MARYLAND	CMMD
		- VIRGINIA	CVVA
		- W. VIRGINIA	CWWV
	2. DIAMOND STATE TELEPHONE	- DELAWARE	DSDE
	3. BELL OF PA	- PENNSYLVANIA	PAPA
	4. NEW JERSEY BELL	- NEW JERSEY	NJNJ
BELLSOUTH			BSTR
	1. SOUTHERN BELL		SBTC
		- FLORIDA	SBFL
		- GEORGIA	SBGA
		- NO. CAROLINA	SBNC
		- SO. CAROLINA	SBSC
	2. SO. CENTRAL BELL		SCTC
		- ALABAMA	SCAL
		- KENTUCKY	SCKY
		- LOUISIANA	SCLA
		- MISSISSIPPI	SCMS
		- TENNESSEE	SCTN

DIVESTED BOC INDEX

HOLDING COMPANY	OPERATING COMPANY	STUDY AREA	STUDY AREA CODE
NYNEX			NXTR
	1. NEW ENGLAND TELE.		NETC
		- MAINE	NEME
		- MASS.	NEMA
		- NEW HAMP.	NENH
		- RHODE IS.	NERI
		- VERMONT	NEVT
	2. NEW YORK TELE.	- NEW YORK	NYNY
PACIFIC			PTTR
	1. PACIFIC BELL	- CALIFORNIA	PTCA
	2. NEVADA BELL	- NEVADA	PTNV
SOUTHWESTERN BELL TELEPHONE COMPANY			SWTR
		- ARKANSAS	SWAR
		- KANSAS	SWKS
		- MISSOURI	SWMO
		- OKLAHOMA	SWOK
		- TEXAS	SWTX
US WEST			USTR
	1. MOUNTAIN BELL		MSTC
		- ARIZONA	MSAZ
		- COLORADO	MSCO
		- IDAHO	MSID
		- MONTANA	MSMT
		- NEW MEXICO	MSNM
		- UTAH	MSUT
		- WYOMING	MSWY
	2. NORTHWESTERN BELL		NWTC
		- IOWA	NWIA
		- MINNESOTA	NWMN
		- NEBRASKA	NWNE
		- NO. DAKOTA	NWND
		- SO. DAKOTA	NWSD
	3. PACIFIC NORTHWEST BELL		PNTC
		- IDAHO	PNID
		- OREGON	PNOR
		- WASHINGTON	PNWA
TOTAL DIVESTED BELL OPERATING COMPANIES			TBOC
TOTAL TIER I INDUSTRY			TOTL

INDEPENDENT COMPANY INDEX

HOLDING COMPANY	OPERATING COMPANY	STUDY AREA	STUDY AREA CODE
CENTRAL TELEPHONE COMPANY			CETC
	1. OF FLORIDA	- FLORIDA	CEFL
	2. OF NEVADA	- NEVADA	CENV
CINCINNATI BELL TELEPHONE			
	- OHIO & KENTUCKY		CBTC
CONTINENTAL TELEPHONE COMPANY			COTC
	1. CONTEL OF CALIF.	- CALIFORNIA	COCA
	2. CONTEL OF N.Y.	- NEW YORK	CONY
	3. CONTEL OF TEXAS	- TEXAS	COTX
	4. CONTEL OF VA.	- VIRGINIA	COVA
GTE TELEPHONE OPERATING COMPANIES			GTTC
1. GTE CALIFORNIA, INC.		- CALIF.	GTCA
2. GTE FLORIDA, INC.		- FLORIDA	GTFL
3. GTE NORTHWEST, INC.			GTNW
		- IDAHO	GTID
		- MONTANA	GTMT
		- OREGON	GTOR
		- WASHINGTON	GTWA
		- WEST COAST CALIFORNIA	GNCA
		- ID + MT	GTNA
		- OR + WA + WEST COAST CALIFORNIA	GTNB
4. GTE SOUTH, INC.			GTSO
		- ALABAMA	GTAL
		- GEORGIA	GTGA
		- KENTUCKY	GTKY
		- NO. CAROLINA	GTNC
		- SO. CAROLINA	GTSC
		- TENNESSEE	GTTN
		- VIRGINIA	GTVA
		- W. VIRGINIA	GTWV

HOLDING COMPANY	OPERATING COMPANY	STUDY AREA	STUDY AREA CODE
5. GTE SOUTHWEST, INC.			GTSW
		- ARKANSAS	GTAR
		- NEW MEXICO	GTNM
		- OKLAHOMA	GTOK
		- TEXAS	GTTX
6. GTE NORTH, INC.			GTMW
		- ILLINOIS	GTIL
		- INDIANA	GTIN
		- IOWA	GTIA
		- MICHIGAN	GTMI
		- MINNESOTA	GTMN
		- MISSOURI	GTMO
		- NEBRASKA (ALSO SERVING KANSAS)	GTNE
		- OHIO	GTOH
		- PENNSYLVANIA	GTPA
		- WISCONSIN	GTWI
7. GTE HAWAIIAN, INC.		- HAWAII	GTHI
LINCOLN TELEPHONE COMPANY		- NEBRASKA	LTNE
ROCHESTER TELEPHONE CORPORATION		- NEW YORK	RTN~~Y~~
SOUTHERN NEW ENGLAND TELEPHONE		- CONNECTICUT	SNCT
UNITED TELEPHONE SYSTEM			UTTC
1. UNITED TEL. CO. OF FLORIDA		- FLORIDA	UTFL
2. UNITED TEL. CO. OF INDIANA		- INDIANA	UTIN
3. CAROLINA TEL. AND TEL. CO.		- NO. CAROLINA	UTNC
4. UNITED TEL. CO. OF OHIO		- OHIO	UTOH
5. UNITED TEL. CO. OF PENN.		- PENNSYLVANIA	UTPA
6. UNITED INTER-MOUNTAIN TEL. CO.			UTIM
		- TENNESSEE	UTTN
		- VIRGINIA	UTVA
TOTAL INDEPENDENT COMPANIES			TICO

Attachment B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)
	)
Commission Requirements	)
for Cost Support Material	)
To Be Filed with 1990 Annual	)
Access Tariffs	)

ORDER

Approved by OMB
3060-0400
Expires 07/31/90
See below for information regarding public
burden estimate

NOTICE: The Tariff Review Plan (TRP) contains requirements for summary cost support material that certain local exchange carriers (LECs) must file to support their annual access charge tariff filings in partial fulfillment of Section 61.38 of the Commission's Rules. The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. The information in the TRP is used by the FCC to determine whether the services offered are just and reasonable as required by the Communications Act of 1934, as amended. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503.

CHART COS-1(P) AND COS-1(H)

These charts are in the same format as ARMIS Report 43-01. Chart COS-1(H) must be filed with annual 1989 data.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0179
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
AREA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Rev	Classification (a)	Total (b)	Source (c)	SWPA and Intra-co Adjustments (d)	All Other Adjustments (e)	Subject to Separations (f)	State (g)	Interstate (h)	Common Line				
									Pay (i)	Inside Wire (j)	NTS (k)	CPE (l)	Total (m)
	Revenues												
1010	Basic Local Service		N/A						N/A	N/A	N/A	N/A	N/A
1020	Network Access Services		N/A									N/A	
1030	Toll Network Services		N/A						N/A	N/A	N/A	N/A	N/A
1040	Miscellaneous											N/A	
1050	Settlements		N/A									N/A	
1060	Uncollectibles											N/A	
1090	Net Revenues											N/A	
	Expenses												
1110	Equal Access		N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1120	Plant Specific											N/A	
1130	Plant Non-Specific											N/A	
1140	Customer Operations Marketing											N/A	
1150	Customer Operations Services											N/A	
1160	Corporate Operations											N/A	
1170	Access		N/A					N/A	N/A	N/A	N/A	N/A	N/A
1180	Depreciation/Amortization											N/A	
1185	FCC Expense Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1190	Total Operating Expenses											N/A	
	Other Operating Items												
1290	Other Operating Income/Losses											N/A	
	Non-operating Items												
1310	Interest and Related Items											N/A	
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	N/A			N/A	N/A	N/A	N/A	N/A	N/A
1330	Extraordinary Items											N/A	
1340	AFUDC											N/A	
1350	Special Charges											N/A	
1360	All Other Non-operating Items											N/A	
1370	FCC Non-operating Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1390	Total Non-operating Items											N/A	
	Other Taxes												
1410	State and Local Income											N/A	
1420	Other State and Local											N/A	
1490	Total Other Taxes											N/A	
	Federal Income Taxes												
1510	Fixed Charges											N/A	
1520	IRS Income Adjustment		N/A									N/A	
1530	FCC Taxable Income Adjustment	N/A	N/A			N/A	N/A					N/A	
1540	ITC Amortization											N/A	
1550	FCC ITC Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1590	Net FIT			N/A	N/A							N/A	
	Plant-in-Service												
1610	Equal Access Investment		N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1620	Support Plant											N/A	
1630	Operator Systems Equipment								N/A	N/A	N/A	N/A	N/A
1640	COE-Switching								N/A	N/A	N/A	N/A	N/A
1650	COE-Transmission									N/A		N/A	
1660	Cable and Wire Facilities											N/A	
1670	IOT Equipment											N/A	
1680	Amortizable Assets											N/A	
1690	Total Plant												
	Other Investments												
1710	Property Held for Future Use											N/A	
1720	Plant Under Construction											N/A	
1730	Plant Acquisition Adjustment	N/A	N/A	N/A								N/A	
1740	Investment in Nonaffiliated Cos											N/A	
1750	Other Deferred Charges											N/A	
1760	Inventories											N/A	
1770	Cash Working Capital	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1780	FCC Investment Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1790	Total Other Investments											N/A	
	Reserves												
1810	Other Jurisdictional Assets-Net								N/A	N/A	N/A	N/A	N/A
1820	Accumulated Depreciation											N/A	
1830	Accumulated Amortization											N/A	
1840	Deferred FIT											N/A	
1850	Customer Deposits					N/A						N/A	
1860	Other Accrued Liabilities											N/A	
1870	Other Deferred Credits											N/A	
1880	All Other Reserve Items											N/A	
1885	FCC Reserve Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1890	Total Reserves											N/A	
	Return Data												
1910	Average Net Investment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1915	Net Return	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1920	Rate of Return	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1925	FCC Ordered Refund	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1930	Net Return Including FCC Refund	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1935	Rate of Return (including refund)	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
	Miscellaneous Data												
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A		N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A		N/A	

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From xxxx YYYY To xxxx YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification (a)	Traffic Sensitive					Special Access (g)	Total Access (h)	Billing & Collection (m)	IX (y)
		Switching (n)	EqualAccess (o)	Transport (p)	Information (q)	Total (r)				
	Revenues									
1010	Basic Local Service	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1020	Network Access Services								N/A	N/A
1030	Toll Network Services	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1040	Miscellaneous		N/A							
1050	Settlements									
1060	Uncollectibles									
1090	Net Revenues									
	Expenses									
1110	Equal Access			N/A	N/A		N/A		N/A	N/A
1120	Plant Specific		N/A							
1130	Plant Non-Specific									
1140	Customer Operations Marketing									
1150	Customer Operations Services									
1160	Corporate Operations									
1170	Access	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1180	Depreciation/Amortization									
1185	FCC Expense Adjustment									
1190	Total Operating Expenses									
	Other Operating Items									
1290	Other Operating Income/Losses									
	Non-operating Items									
1310	Interest and Related Items									
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1330	Extraordinary Items									
1340	AFUDC									
1350	Special Charges									
1360	All Other Non-operating Items									
1370	FCC Non-operating Adjustment									
1390	Total Non-operating Items									
	Other Taxes									
1410	State and Local Income									
1420	Other State and Local									
1490	Total Other Taxes									
	Federal Income Taxes									
1510	Fixed Charges									
1520	IRS Income Adjustment									
1530	FCC Taxable Income Adjustment									
1540	ITC Amortization									
1550	FCC ITC Adjustment									
1590	Net FIT									
	Plant-in-Service									
1610	Equal Access Investment			N/A	N/A		N/A		N/A	N/A
1620	Support Plant									
1630	Operator Systems Equipment		N/A				N/A		N/A	
1640	COE-Switching		N/A		N/A				N/A	
1650	COE-Transmission	N/A	N/A		N/A				N/A	
1660	Cable and Wire Facilities	N/A	N/A		N/A				N/A	
1670	IOT Equipment	N/A	N/A	N/A	N/A	N/A			N/A	
1680	Amortizable Assets									
1690	Total Plant									
	Other Investments									
1710	Property Held for Future Use		N/A							
1720	Plant Under Construction		N/A							
1730	Plant Acquisition Adjustment									
1740	Investment in Nonaffiliated Cos									
1750	Other Deferred Charges									
1760	Inventories									
1770	Cash Working Capital									
1780	FCC Investment Adjustment									
1790	Total Other Investments									
	Reserves									
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1820	Accumulated Depreciation									
1830	Accumulated Amortization									
1840	Deferred FIT		N/A							
1850	Customer Deposits									
1860	Other Accrued Liabilities									
1870	Other Deferred Credits									
1880	All Other Reserve Items									
1885	FCC Reserve Adjustment									
1890	Total Reserves									
	Return Data									
1910	Average Net Investment								N/A	N/A
1915	Net Return								N/A	N/A
1920	Rate of Return								N/A	N/A
1925	FCC Ordered Refund								N/A	N/A
1930	Net Return Including FCC Refund								N/A	N/A
1935	Rate of Return (including refund)								N/A	N/A
	Miscellaneous Data									
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
(AS BOOKED)
TIME SERIES COST DATA

(DOLLARS IN THOUSANDS)

	COST DATA	1986 1Q (A)	1986 2Q (B)	1986 3Q (C)	1986 4Q (D)	1987 1Q (E)	1987 2Q (F)	1987 3Q (G)	1987 4Q (H)
	REVENUE REQUIRE.								
100	Deprec Exp								
110	Exp Less Deprec (1)								
120	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
130	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
140	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
150	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
160	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
170	Tel Plnt in Serv								
180	Rate Base Adj.								
190	Deprec Reserve								
200	Accum Deferred Income Tax								
210	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
(AS BOOKED)
TIME SERIES COST DATA

(DOLLARS IN THOUSANDS)

	COST DATA	1988 1Q	1988 2Q	1988 3Q	1988 4Q	1989 1Q	1989 2Q	1989 3Q	1989 4Q
		(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
	REVENUE REQUIRE.								
100	Deprec Exp								
110	Exp Less Deprec (1)								
120	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
130	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
140	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
150	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
160	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
170	Tel Plnt in Serv								
180	Rate Base Adj.								
190	Deprec Reserve								
200	Accum Deferred Income Tax								
210	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
(AS BOOKED)
TIME SERIES COST DATA
(DOLLARS IN THOUSANDS)

	COST DATA	HISTORICAL PERIOD 1/89 - 12/89 (Q)	PROSPECTIVE (TEST PER.) 7/90 - 6/91 (R)	IMPLICIT TEST PER GROWTH (S)
	REVENUE REQUIRE.			
100	Deprec Exp			
110	Exp Less Deprec (1)			
120	Tax Less F.I.T.	N/A	N/A	N/A
130	Net Return	N/A	N/A	N/A
140	F.I.T.	N/A	N/A	N/A
150	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A
160	Revenue Requirement	N/A	N/A	N/A
	RATE BASE			
170	Tel Plnt in Serv			
180	Rate Base Adj.			
190	Deprec Reserve			
200	Accum Deferred Income Tax			
210	Net Rate Base			

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
SUBJECT TO SEPARATION
TIME SERIES COST DATA
(DOLLARS IN THOUSANDS)

	COST DATA	1986 1Q (A)	1986 2Q (B)	1986 3Q (C)	1986 4Q (D)	1987 1Q (E)	1987 2Q (F)	1987 3Q (G)	1987 4Q (H)
	REVENUE REQUIRE.								
300	Deprec Exp								
310	Exp Less Deprec (1)								
320	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
330	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
340	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
350	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
360	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
370	Tel Plnt in Serv								
380	Rate Base Adj.								
390	Deprec Reserve								
400	Accum Deferred Income Tax								
410	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
SUBJECT TO SEPARATION
TIME SERIES COST DATA

(DOLLARS IN THOUSANDS)

	COST DATA	1988 1Q	1988 2Q	1988 3Q	1988 4Q	1989 1Q	1989 2Q	1989 3Q	1989 4Q
		(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
	REVENUE REQUIRE.								
300	Deprec Exp								
310	Exp Less Deprec (1)								
320	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
330	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
340	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
350	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
360	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
370	Tel Plnt in Serv								
380	Rate Base Adj.								
390	Deprec Reserve								
400	Accum Deferred Income Tax								
410	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

TOTAL COMPANY
SUBJECT TO SEPARATION
TIME SERIES COST DATA

(DOLLARS IN THOUSANDS)

	COST DATA	HISTORICAL PERIOD 1/89 - 12/89	PROSPECTIVE (TEST PER.) 7/90 - 6/91	IMPLICIT TEST PER GROWTH
		(Q)	(R)	(S)
	REVENUE REQUIRE.			
300	Deprec Exp			
310	Exp Less Deprec (1)			
320	Tax Less F.I.T.	N/A	N/A	N/A
330	Net Return	N/A	N/A	N/A
340	F.I.T.	N/A	N/A	N/A
350	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A
360	Revenue Requirement	N/A	N/A	N/A
	RATE BASE			
370	Tel Plnt in Serv			
380	Rate Base Adj.			
390	Deprec Reserve			
400	Accum Deferred Income Tax			
410	Net Rate Base			

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

INTERSTATE
TIME SERIES COST DATA
(DOLLARS IN THOUSANDS)

	COST DATA	1986 1Q (A)	1986 2Q (B)	1986 3Q (C)	1986 4Q (D)	1987 1Q (E)	1987 2Q (F)	1987 3Q (G)	1987 4Q (H)
	REVENUE REQUIRE.								
500	Deprec Exp								
510	Exp Less Deprec (1)								
520	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
530	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
540	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
550	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
560	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
570	Tel Plnt in Serv								
580	Rate Base Adj.								
590	Deprec Reserve								
600	Accum Deferred Income Tax								
610	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

1387

FILING ENTITY: ANY COMPANY

INTERSTATE
TIME SERIES COST DATA
(DOLLARS IN THOUSANDS)

	COST DATA	1988 1Q	1988 2Q	1988 3Q	1988 4Q	1989 1Q	1989 2Q	1989 3Q	1989 4Q
		(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
	REVENUE REQUIRE.								
500	Deprec Exp								
510	Exp Less Deprec (1)								
520	Tax Less F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
530	Net Return	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
540	F.I.T.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
550	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
560	Revenue Requirement	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	RATE BASE								
570	Tel Plnt in Serv								
580	Rate Base Adj.								
590	Deprec Reserve								
600	Accum Deferred Income Tax								
610	Net Rate Base								

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

INTERSTATE
TIME SERIES COST DATA

(DOLLARS IN THOUSANDS)

	COST DATA	HISTORICAL PERIOD 1/89 - 12/89 (Q)	PROSPECTIVE (TEST PER.) 7/90 - 6/91 (R)	IMPLICIT TEST PER GROWTH (S)
	REVENUE REQUIRE.			
500	Deprec Exp			
510	Exp Less Deprec (1)			
520	Tax Less F.I.T.	N/A	N/A	N/A
530	Net Return	N/A	N/A	N/A
540	F.I.T.	N/A	N/A	N/A
550	Uncollect Rev & Inter During Cons & Other Rev Adj.	N/A	N/A	N/A
560	Revenue Requirement	N/A	N/A	N/A
	RATE BASE			
570	Tel Plnt in Serv			
580	Rate Base Adj.			
590	Deprec Reserve			
600	Accum Deferred Income Tax			
610	Net Rate Base			

NOTE: (1) Expense Less Depreciation should exclude inside wire expenses and settlements.

FILING ENTITY: ANY COMPANY

INTERSTATE ACCESS COST DATA
EFFECT OF VARIOUS ITEMS ON
1989 TEST YEAR AMOUNTS

(Dollars in Thousands)

	COST DATA	TOTAL REGULATED IS ACCESS TEST YEAR (7/90 - 6/91) (A)	AMORTIZATION OF EMBEDDED INSIDE WIRE (B)	DIFFERENCE BETWEEN PYCOS AND TEST YEAR BAF (C)	DEP. AND AMORT. RESERVE IMBALANCE CORRECTIONS (D)	LOCAL SWITCHING ALLOCATOR TRANSITION (DEM) (E)
	REVENUE REQUIREMENT					
100	Depreciation Expense					
110	Expense Less Depreciation					
120	Taxes Less F.I.T.					
130	Net Return					
140	F.I.T.					
150	Uncollectible Rev., Interest During Const. & other Rev Adj.					
160	Revenue Requirement					
	RATE BASE					
170	Total Plant In Service					
180	Rate Base Adjustments					
190	Depreciation Reserve					
200	Accum. Deferred Inc. Tax					
210	Net Rate Base					

NOTE: Column (B) includes effects of annual rate base reductions due to ongoing amortizations as well as the effect of completion of amortizations. See Commission Requirements for Cost Support Material To Be Filed with January 1, 1990, Access Tariff Revisions, Memorandum Opinion and Order, DA 89-1255, released September 29, 1989.

Filing Entity: ANY COMPANY

ANALYSIS OF ACCESS ELEMENT COST DATA

(DOLLARS IN THOUSANDS)

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	TEST YEAR FORECAST 7/90 TO 6/91						
	REVENUE REQUIREMENT						
100	Depreciation						
105	Expense Less Depreciation						
110	Taxes Less F.I.T.				N/A	N/A	N/A
115	Net Return				N/A	N/A	N/A
120	F.I.T				N/A	N/A	N/A
125	Uncoll. Rev., I.D.C. & Other Rev. Adj.				N/A	N/A	N/A
130	Revenue Requirement				N/A	N/A	N/A
135	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
140	Telephone Plant In Service						
145	Rate Base Adjustments						
150	Depreciation Reserve						
155	Accum. Deferred Inc. Tax						
160	Net Rate Base						
	HISTORICAL PERIOD 1/89 TO 12/89						
	REVENUE REQUIREMENT						
200	Depreciation						
205	Expense Less Depreciation						
210	Taxes Less F.I.T.						N/A
215	Net Return						N/A
220	F.I.T						N/A
225	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
230	Revenue Requirement						N/A
235	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
240	Telephone Plant In Service						
245	Rate Base Adjustments						
250	Depreciation Reserve						
255	Accum. Deferred Inc. Tax						
260	Net Rate Base						

Filing Entity: ANY COMPANY

ANALYSIS OF ACCESS ELEMENT COST DATA
(DOLLARS IN THOUSANDS)

COS - 4
PAGE 2 OF 4

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD 4/89 TO 12/89 ANNUALIZED (1)						
	REVENUE REQUIREMENT						
300	Depreciation						N/A
305	Expense Less Depreciation						N/A
310	Taxes Less F.I.T.						N/A
315	Net Return						N/A
320	F.I.T.						N/A
325	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
330	Revenue Requirement						N/A
335	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
340	Telephone Plant In Service						
345	Rate Base Adjustments						
350	Depreciation Reserve						
355	Accum. Deferred Inc. Tax						
360	Net Rate Base						
	TEST YEAR FORECAST 4/89 TO 12/89 ANNUALIZED (2)						
	REVENUE REQUIREMENT						
400	Depreciation				N/A	N/A	N/A
405	Expense Less Depreciation				N/A	N/A	N/A
410	Taxes Less F.I.T.				N/A	N/A	N/A
415	Net Return						
420	F.I.T.						
425	Uncoll. Rev., I.D.C. & Other Rev. Adj.				N/A	N/A	N/A
430	Revenue Requirement				N/A	N/A	N/A
435	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
440	Telephone Plant In Service						
445	Rate Base Adjustments						
450	Depreciation Reserve						
455	Accum. Deferred Inc. Tax						
460	Net Rate Base						

Notes: (1) Actual Operating Statistics. These data should reflect the same accounts and ratemaking treatment included in the forecasts for this period.
(2) From 1989 TRP COS - 4 (3) From 1988 TRP COS - 5 (4) From 1987 TRP COS - 5

Filing Entity: ANY COMPANY

ANALYSIS OF ACCESS ELEMENT COST DATA

(DOLLARS IN THOUSANDS)

COS - 4
PAGE 3 OF 4

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD 1/88 TO 12/88 (1)						
	REVENUE REQUIREMENT						
500	Depreciation						
505	Expense Less Depreciation						
510	Taxes Less F.I.T.						N/A
515	Net Return						N/A
520	F.I.T.						N/A
525	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
530	Revenue Requirement						N/A
535	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
540	Telephone Plant In Service						
545	Rate Base Adjustments						
550	Depreciation Reserve						
555	Accum. Deferred Inc. Tax						
560	Net Rate Base						
	TEST YEAR FORECAST 1/88 TO 12/88 (3)						
	REVENUE REQUIREMENT						
600	Depreciation						
605	Expense Less Depreciation						
610	Taxes Less F.I.T.						N/A
615	Net Return						N/A
620	F.I.T						N/A
625	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
630	Revenue Requirement						N/A
635	Access Service Revenues						N/A
	RATE BASE						
640	Telephone Plant In Service						
645	Rate Base Adjustments						
650	Depreciation Reserve						
655	Accum. Deferred Inc. Tax						
660	Net Rate Base						

Notes: (1) Actual Operating Statistics. These data should reflect the same accounts and ratemaking treatment included in the forecasts for this period.
(2) From 1989 TRP COS - 4 (3) From 1988 TRP COS - 5 (4) From 1987 TRP COS - 5

Filing Entity: ANY COMPANY

ANALYSIS OF ACCESS ELEMENT COST DATA

(DOLLARS IN THOUSANDS)

COS - 4
PAGE 4 OF 4

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD 1/87 TO 12/87 (1)						
	REVENUE REQUIREMENT						
700	Depreciation						
705	Expense Less Depreciation						
710	Taxes Less F.I.T.						N/A
715	Net Return						N/A
720	F.I.T.						N/A
725	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
730	Revenue Requirement						N/A
735	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
740	Telephone Plant In Service						
745	Rate Base Adjustments						
750	Depreciation Reserve						
755	Accum. Deferred Inc. Tax						
760	Net Rate Base						
	TEST YEAR FORECAST 1/87 TO 12/87 (4)						
	REVENUE REQUIREMENT						
800	Depreciation						
805	Expense Less Depreciation						
810	Taxes Less F.I.T.						N/A
815	Net Return						N/A
820	F.I.T.						N/A
825	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
830	Revenue Requirement						N/A
835	Access Service Revenues						N/A
	RATE BASE						
840	Telephone Plant In Service						
845	Rate Base Adjustments						
850	Depreciation Reserve						
855	Accum. Deferred Inc. Tax						
860	Net Rate Base						

Notes: (1) Actual Operating Statistics. These data should reflect the same accounts and ratemaking treatment included in the forecasts for this period.
(2) From 1989 TRP COS - 4 (3) From 1988 TRP COS - 5 (4) From 1987 TRP COS - 5

FILING ENTITY: ANY COMPANY

EQUAL ACCESS
TOTAL COMPANY SUBJECT TO SEPARATIONS
(DOLLARS IN THOUSANDS)

		HISTORICAL 1/89 - 12/89	PROSPECTIVE TEST PERIOD 7/90 - 6/91
	REVENUES	(A)	(B)
100	Net Revenues / Rev. Req.		N/A
	EXPENSES AND TAXES		
110	Depreciation Expense		
120	Exp less Dep. - Cumulative Amort. from Prior Periods		
130	Exp less Dep. - Amort. For Current Period		
140	Tax less F.I.T.		N/A
150	F.I.T.		N/A
160	Investment Tax Credit Amort.		
170	Fixed Charges		
180	Net Return		N/A
	RATE BASE		
200	Total Plant In Service		
210	Unamort Equal Access Amount Cumulative from Prior Period		
220	Unamort Equal Access Amount For Current Period		
230	Other Rate Base Adjustments		N/A
240	Depreciation Reserve		
250	Accum. Deferred Income Tax		
260	Net Rate Base		N/A
270	Net Rate of Return	N/A	N/A
280	Booked Rate of Return	N/A	N/A

FILING ENTITY: ANY COMPANY

EQUAL ACCESS
SEPARATED INTERSTATE WITH EXPENSE AMORTIZATION
(DOLLARS IN THOUSANDS)

COS - 5
Page 2 of 2

		HISTORICAL 1/89 - 12/89		PROSPECTIVE 7/90 - 6/91	
		ECs W/SEP. EA RATE ELEMENT	ECs W/EA COSTS INCL IN LOC SWITCH RATE ELEMENT	ECs W/SEP. EA RATE ELEMENT	ECs W/EA COSTS INCL IN LOC SWITCH RATE ELEMENT
		(C)	(D)	(E)	(F)
	REVENUES				
300	Net Revenues/Rev. Req.				
	EXPENSES AND TAXES				
310	Depreciation Expense				
320	Exp less Dep - Cumulative Amort. from Prior Period				
330	Exp less Dep - Amortized for Current Period				
340	Tax Less F.I.T.				
350	F.I.T.				
360	Investment Tax Credit Amort				
370	Fixed Charges				
380	Net Return				
	RATE BASE				
400	Total Plant In Service				
410	Unamort Equal Access Amount Average from Prior Period				
420	Unamort Equal Access Amount Average for Current Period				
430	Other Rate Base Adjustments				
440	Depreciation Reserve				
450	Accum Deferred Income Tax				
460	Net Rate Base				
470	Net Rate of Return				
480	Booked Rate of Return				

CHART COS-6(P) AND CHART COS-6(H)

Chart COS-6(H) incorporates by reference ARMIS Report 43-03. Chart COS-6(P) is provided in the same format as chart COS-6(H).

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	REVENUES							
	Local Network Svcs							
5001	Basic area revenue			N/A	N/A	N/A	N/A	N/A
5002	Optional ext area			N/A	N/A	N/A	N/A	N/A
5003	Cellular mobile			N/A	N/A	N/A	N/A	N/A
5004	Other mobile servic			N/A	N/A	N/A	N/A	N/A
510	Ba loc svc(A 5000)			N/A	N/A	N/A	N/A	N/A
5010	Public telephone			N/A	N/A	N/A	N/A	N/A
5040	Local private line			N/A	N/A	N/A	N/A	N/A
5050	Customer premises			N/A	N/A	N/A	N/A	N/A
5060	Other local exchang			N/A	N/A	N/A	N/A	N/A
5069	Other local settlem			N/A	N/A	N/A	N/A	N/A
520	Ba loc svc			N/A	N/A	N/A	N/A	N/A
	Network Access Svcs							
5081	End user			N/A	N/A	N/A	N/A	N/A
5082	Switched access			N/A	N/A	N/A	N/A	N/A
5083	Special access			N/A	N/A	N/A	N/A	N/A
5084	State access			N/A	N/A	N/A	N/A	N/A
5080	Network access			N/A	N/A	N/A	N/A	N/A
	Toll Network Svcs							
5100	LD msg rev(Class A)			N/A	N/A	N/A	N/A	N/A
5111	LD Inward-only			N/A	N/A	N/A	N/A	N/A
5112	LD Outward-only			N/A	N/A	N/A	N/A	N/A
5110	Unidirectional LD			N/A	N/A	N/A	N/A	N/A
5121	Subvce LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5122	Vce LD pvt network			N/A	N/A	N/A	N/A	N/A
5123	Audio LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5124	Vidio LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5125	Digital LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5126	LD pvt ntwk switch			N/A	N/A	N/A	N/A	N/A
5128	Other LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5129	Other LD pvt settle			N/A	N/A	N/A	N/A	N/A
5120	LD private network			N/A	N/A	N/A	N/A	N/A
5160	Other LD			N/A	N/A	N/A	N/A	N/A
5169	Other LD settlement			N/A	N/A	N/A	N/A	N/A
525	LD ntwk svcs rev			N/A	N/A	N/A	N/A	N/A
	Miscellaneous							
5230	Directory			N/A	N/A	N/A	N/A	N/A
5240	Rent			N/A	N/A	N/A	N/A	N/A
5250	Corporate operation			N/A	N/A	N/A	N/A	N/A
5261	Special billing arr			N/A	N/A	N/A	N/A	N/A
5262	Customer operations			N/A	N/A	N/A	N/A	N/A
5263	Plant operations			N/A	N/A	N/A	N/A	N/A
5264	Other incident reg			N/A	N/A	N/A	N/A	N/A
5269	Other settlements			N/A	N/A	N/A	N/A	N/A
5260	Misc. (Class A)			N/A	N/A	N/A	N/A	N/A
5270	Carrier bill & coll			N/A	N/A	N/A	N/A	N/A
5280	Nonregulated		N/A		N/A	N/A	N/A	N/A
5200	Miscellaneous							
	Uncollectible revs							
5301	Uncollect-telecomm							
5302	Uncollect-other							
5300	Uncollectible rev							
530	Net Revenues							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (j)	Total Nonreg. (i)	BOFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	REVENUES					
	Local Network Svcs					
5001	Basic area revenue		N/A		N/A	N/A
5002	Optional ext area		N/A		N/A	N/A
5003	Cellular mobile		N/A		N/A	N/A
5004	Other mobile servic		N/A		N/A	N/A
510	Ba loc svc (A 5000)		N/A		N/A	N/A
5010	Public telephone		N/A		N/A	N/A
5040	Local private line		N/A		N/A	N/A
5050	Customer premises		N/A		N/A	N/A
5060	Other local exchang		N/A		N/A	N/A
5069	Other local settlem		N/A		N/A	N/A
520	Ba loc svc		N/A			
	Network Access Svcs					
5081	End user		N/A			
5082	Switched access		N/A			
5083	Special access		N/A			
5084	State access		N/A			
5080	Network access		N/A			
	Toll Network Svcs					
5100	LD mes rev(Class A)		N/A		N/A	N/A
5111	LD Inward-only		N/A		N/A	N/A
5112	LD Outward-only		N/A		N/A	N/A
5110	Unidirectional LD		N/A		N/A	N/A
5121	Subvce LD pvt ntwk		N/A		N/A	N/A
5122	Voc LD pvt network		N/A		N/A	N/A
5123	Audio LD pvt ntwk		N/A		N/A	N/A
5124	Vidio LD pvt ntwk		N/A		N/A	N/A
5125	Digital LD pvt ntwk		N/A		N/A	N/A
5126	LD pvt ntwk switch		N/A		N/A	N/A
5128	Other LD pvt ntwk		N/A		N/A	N/A
5129	Other LD pvt settle		N/A		N/A	N/A
5120	LD private network		N/A		N/A	N/A
5160	Other LD		N/A		N/A	N/A
5169	Other LD settlement		N/A		N/A	N/A
525	LD ntwk svcs rev		N/A			
	Miscellaneous					
5230	Directory		N/A		N/A	N/A
5240	Rent		N/A		N/A	N/A
5250	Corporate operation		N/A		N/A	N/A
5261	Special billing arr		N/A		N/A	N/A
5262	Customer operations		N/A		N/A	N/A
5263	Plant operations		N/A		N/A	N/A
5264	Other incident reg		N/A		N/A	N/A
5269	Other settlements		N/A		N/A	N/A
5260	Misc. (Class A)		N/A		N/A	N/A
5270	Carrier bill & coll		N/A		N/A	N/A
5280	Nonregulated	N/A		N/A	N/A	N/A
5200	Miscellaneous					
	Uncollectible revs					
5301	Uncollect-telecomm				N/A	N/A
5302	Uncollect-other				N/A	N/A
5300	Uncollectible rev					
530	Net Revenues					

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Plant Specific							
§112	Motor vehicle							
§113	Aircraft							
§114	Special purpose veh							
§115	Garage work equip							
§116	Other work equip							
§110	Network support							
§121	Land & building							
§122	Furniture & artwork							
§123	Office equipment							
§124	Gen purpose comput							
§120	General support							
§211	Analog electronic							
§212	Digital electronic							
§215	Electro-mechanical							
§210	Central office-swit							
§220	Operator systems							
	Central office tran							
§231	Radio systems							
§232	Circuit equipment							
§230	Central office tran							
§311	Station apparatus							
§341	Large PBX							
§351	Public tel tmnl equ							
§362	Other terminal equi							
§310	Information O/T							
§411	Poles							
§421	Aerial cable							
§422	Underground cable							
§423	Buried cable							
§424	Submarine cable							
§425	Deep sea cable							
§426	Intrabldg ntwk cabl							
§431	Aerial wire							
§441	Conduit systems							
§410	Cable & wire							
	Plant Non-Specific							
§511	FMFTU							
§512	Provisioning							
§510	Other PP&E expenses							
§531	Power							
§532	Network administrat							
§533	Testing							
§534	Plant ops administr							
§535	Engineering							
§530	Network operations							
§540	Access							
	Depreciate/Amortize							
§561	Depreciation-TPIS							
§562	Depreciation-FMFTU							
§563	Amortization-tanglb							
§564	Amortization-intang							
§565	Amortization-other							
§560	Depreciate/Amortize							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From xxxx YYYY To xxxx YYYY TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (j)	Total Nonreg. (j)	SWA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	EXPENSES					
	Plant Specific					
§112	Motor vehicle				N/A	N/A
§113	Aircraft				N/A	N/A
§114	Special purpose veh				N/A	N/A
§115	Garage work equip				N/A	N/A
§116	Other work equip				N/A	N/A
§110	Network support					
§121	Land & building				N/A	N/A
§122	Furniture & artwork				N/A	N/A
§123	Office equipment				N/A	N/A
§124	Gen purpose comput				N/A	N/A
§120	General support					
§211	Analog electronic				N/A	N/A
§212	Digital electronic				N/A	N/A
§215	Electro-mechanical				N/A	N/A
§210	Central office-swit					
§220	Operator systems					
	Central Office Tran					
§231	Radio systems				N/A	N/A
§232	Circuit equipment				N/A	N/A
§230	Central office tran					
§311	Station apparatus				N/A	N/A
§341	Large PBX				N/A	N/A
§351	Public tel tmnl equ				N/A	N/A
§362	Other terminal equi				N/A	N/A
§310	Information O/T					
§411	Poles				N/A	N/A
§421	Aerial cable				N/A	N/A
§422	Underground cable				N/A	N/A
§423	Buried cable				N/A	N/A
§424	Submarine cable				N/A	N/A
§425	Deep sea cable				N/A	N/A
§426	Intrabldg ntwk cabl				N/A	N/A
§431	Aerial wire				N/A	N/A
§441	Conduit systems				N/A	N/A
§410	Cable & wire					
	Plant Non-Specific					
§511	PHFTU				N/A	N/A
§512	Provisioning				N/A	N/A
§510	Other PP&E expenses					
§531	Power				N/A	N/A
§532	Network administrat				N/A	N/A
§533	Testing				N/A	N/A
§534	Plant ops administr				N/A	N/A
§535	Engineering				N/A	N/A
§530	Network operations					
§540	Access					
	Depreciate/Amortize					
§561	Depreciation-TPIS				N/A	N/A
§562	Depreciation-PHFTU				N/A	N/A
§563	Amortization-tangib				N/A	N/A
§564	Amortization-intang				N/A	N/A
§565	Amortization-other				N/A	N/A
§560	Depreciate/Amortize					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Customer Ops-Mkting							
6611	Product management							
6612	Sales							
6613	Product advertising							
6610	Marketing expense							
	Customer Ops-Servic							
6621	Call completion							
6622	Number services							
6623	Customer services							
6620	Services expense							
	Corporate Operation							
6711	Executive							
6712	Planning							
6710	Executive & plannin							
6721	Accounting & financ							
6722	External relations							
6723	Human resources							
6724	Information Managmt							
6725	Legal							
6726	Procurement							
6727	Research & develop							
6728	Other general & adm							
6720	General & administr							
6790	Prov uncollect note							
	Other Ops Inc/Expen							
7110	Income custom work							
7130	Return nonreg use							
7140	Gain/loss foreign							
7150	Gain/loss land/art							
7160	Other ops gain/loss							
7100	Other ops inc/expen							
	Operating Taxes							
7210	Ops inv tax cr-net							
7220	Ops federal inc tax							
7230	Ops state & local							
7240	Ops other taxes							
7250	Prov defer inc tax							
7200	Operating taxes							
	Nonops income/expen							
7310	Dividend income							
7320	Interest income							
7330	Inc sinking/other							
7340	AFUDC							
7350	Gain/loss property							
7360	Other nonops income							
7370	Special charges							
7300	Nonops income/expen							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Customer Ops-Mkting					
6611	Product management				N/A	N/A
6612	Sales				N/A	N/A
6613	Product advertising				N/A	N/A
6610	Marketing expense					
	Customer Ops-Servic					
6621	Call completion				N/A	N/A
6622	Number services				N/A	N/A
6623	Customer services				N/A	N/A
6620	Services expense					
	Corporate Operation					
6711	Executive				N/A	N/A
6712	Planning				N/A	N/A
6710	Executive & plannin					
6721	Accounting & financ				N/A	N/A
6722	External relations				N/A	N/A
6723	Human resources				N/A	N/A
6724	Information Managmt				N/A	N/A
6725	Legal				N/A	N/A
6726	Procurement				N/A	N/A
6727	Research & develop				N/A	N/A
6728	Other general & adm				N/A	N/A
6720	General & administr					
6790	Prov uncollect note					
	Other Ops Inc/Expen					
7110	Income custom work				N/A	N/A
7130	Return nonreg use				N/A	N/A
7140	Gain/loss foreign				N/A	N/A
7150	Gain/loss land/art				N/A	N/A
7160	Other ops gain/loss				N/A	N/A
7100	Other ops inc/expen					
	Operating Taxes					
7210	Ops inv tax cr-net				N/A	N/A
7220	Ops federal inc tax				N/A	N/A
7230	Ops state & local				N/A	N/A
7240	Ops other taxes				N/A	N/A
7250	Prov defer inc tax				N/A	N/A
7200	Operating taxes					
	Nonops income/expen					
7310	Dividend income				N/A	N/A
7320	Interest income				N/A	N/A
7330	Inc sinking/other				N/A	N/A
7340	AFUDC				N/A	N/A
7350	Gain/loss property				N/A	N/A
7360	Other nonops income				N/A	N/A
7370	Special charges				N/A	N/A
7300	Nonops income/expen					

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Int & Related Items							
7510	Int on funded debt							
7520	Int exp-cap leases							
7530	Amort debt issuance							
7540	Other interest ded							
7500	Int & related items							
	Extraordinary Items							
7610	Extraord income crs							
7620	Extraord income chg							
7630	Current inc tax eff							
7640	Prov defer tax-net							
7600	Extraordinary items							
7910	Inc effcts diff-net			N/A	N/A	N/A	N/A	N/A
7990	Nonreg net income		N/A		N/A		N/A	
	Adjustments							
750	Total Expenses							
	PLANT-IN-SERVICE							
	Support Plant							
2111	Land							
2112	Motor vehicles							
2113	Aircraft							
2114	Special purpose veh							
2115	Garage work equip							
2116	Other work equip							
2121	Buildings							
2122	Furniture							
2123	Office equipment							
2124	Gen purpose comput							
2110	Land & support							
	Central Off-Switch							
2211	Analog elect switch							
2212	Digit elect switch							
2215	Electro-mech switch							
2210	Central off switch							
2220	Operator systems							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (g)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Int & Related Items					
7510	Int on funded debt				N/A	N/A
7520	Int exp-cap leases				N/A	N/A
7530	Amort debt issuance				N/A	N/A
7540	Other interest ded				N/A	N/A
7500	Int & related items					
	Extraordinary Items					
7610	Extraord income crs				N/A	N/A
7620	Extraord income chg				N/A	N/A
7630	Current inc tax eff				N/A	N/A
7640	Prov defer tax-net				N/A	N/A
7600	Extraordinary items					
7910	Inc effcts diff-net		N/A	N/A		
7990	Nonreg net income	N/A		N/A	N/A	N/A
	Adjustments					
750	Total Expenses			N/A	N/A	N/A
	PLANT-IN-SERVICE					
	Support Plant					
2111	Land				N/A	N/A
2112	Motor vehicles				N/A	N/A
2113	Aircraft				N/A	N/A
2114	Special purpose veh				N/A	N/A
2115	Garage work equip				N/A	N/A
2116	Other work equip				N/A	N/A
2121	Buildings				N/A	N/A
2122	Furniture				N/A	N/A
2123	Office equipment				N/A	N/A
2124	Gen purpose comput				N/A	N/A
2110	Land & support					
	Central Off-Switch					
2211	Analog elect switch					
2212	Digit elect switch					
2215	Electro-mech switch					
2210	Central off switch					
2220	Operator systems					

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Central off-Trans							
2231	Radio systems							
2232	Circuit equipment							
2230	Transmission							
	Information O/T							
2311	Station apparatus							
2321	Customer prem wire							
2341	Large PBX							
2351	Public tel terminal							
2362	Other terminal							
2310	Information O/T							
	Cable & Wire Facil							
2411	Poles							
2421	Aerial cable							
2422	Underground cable							
2423	Buried cable							
2424	Submarine cable							
2425	Deep sea cable							
2426	Intrabldg ntwk cabl							
2431	Aerial wire							
2441	Conduit systems							
2410	Cable & wire facil							
	Amortizable Assets							
2681	Capital leases							
2682	Leasehold improve							
2680	Amort tangible asst							
2690	Intangibles							
2001	TPIS							
	OTHER INVESTMENTS							
2002	PHPTU							
2003	TPUC-short term							
2004	TPUC-long term							
2005	Plant acquis adjust							
1220	Material & supplies							
1438	Defer maint & retir							
1439	Deferred charges							
1500	Other jurisd assets							
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	N/A	N/A	N/A
370	Total Investment							
	RESERVES							
	Accum Depreciation							
3100	Accum depreciation							
3200	Accum depr-PHPTU							
	Accum Amortization							
3410	Accum amort-cap lse							
3420	Accum amort-lse imp							
3400	Accum amort-tangibl							
3500	Accum amort-intang							
3600	Accum amort-other							
	Deferred Ops Inc Tx							
4100	Net Current Defer							
4340	Net Noncurrent defe							
	Other Deductions							
4040	Customers' deposits							
4120	Other accru liabil							
4360	Other deferred crs							
4370	Other jurisdiction							
495	Total Reserve							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (1)	Total Nonreg. (j)	SWFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Central off-Trans					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	Information O/T					
2311	Station apparatus				N/A	N/A
2321	Customer prem wire				N/A	N/A
2341	Large PBX				N/A	N/A
2351	Public tel terminal				N/A	N/A
2362	Other terminal				N/A	N/A
2310	Information O/T					
	Cable & Wire Facil					
2411	Poles				N/A	N/A
2421	Aerial cable				N/A	N/A
2422	Underground cable				N/A	N/A
2423	Buried cable				N/A	N/A
2424	Submarine cable				N/A	N/A
2425	Deep sea cable				N/A	N/A
2426	Intrabldg ntwk cabl				N/A	N/A
2431	Aerial wire				N/A	N/A
2441	Conduit systems				N/A	N/A
2410	Cable & wire facil					
	Amortizable Assets					
2681	Capital leases				N/A	N/A
2682	Leasehold improve				N/A	N/A
2680	Amort tangible asst					
2690	Intangibles					
2001	TPIS					
	OTHER INVESTMENTS					
2002	PHPTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Plant acquis adjust					
1220	Material & supplies					
1438	Defer maint & retir					
1439	Deferred charges					
1500	Other jurisd assets					
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	
370	Total Investment					
	RESERVES					
	Accum Depreciation					
3100	Accum depreciation					
3200	Accum depr-PHPTU					
	Accum Amortization					
3410	Accum amort-cap lse				N/A	N/A
3420	Accum amort-lse imp				N/A	N/A
3400	Accum amort-tangibl					
3500	Accum amort-intang					
3600	Accum amort-other					
	Deferred Ops Inc Tx					
4100	Net Current Defer					
4340	Net Noncurrent defe					
	Other Deductions					
4040	Customers' deposits					
4120	Other accru liabil					
4360	Other deferred crs					
4370	Other jurisdiction					
495	Total Reserve					

CHART COS-7(P) AND CHART COS-7(H)

Chart COS-7(H) incorporates by reference ARMIS Report 43-04. Chart COS-7(P) is provided in the same format as chart COS-7(H).

FCC Report 43-04 - Report Definition - Form | January 1990 | Rev. | Page 1 of 90
FCC REPORT 43-04 | Approved by OMB
ARMIS ACCESS REPORT | 3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 1.1 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	I. Equal Access							
	A. Property							
10	GSF 36/69				N/A	N/A	N/A	N/A
11	$EA MOU 36				N/A	N/A	N/A	N/A
12	EA COE Cat 2 36/69				N/A	N/A	N/A	N/A
13	$EA MOU 36				N/A	N/A	N/A	N/A
14	EA COE Cat 3 36/69				N/A	N/A	N/A	N/A
15	$EA MOU 36				N/A	N/A	N/A	N/A
16	EA Oth COE 36/69				N/A	N/A	N/A	N/A
17	$EA MOU 36				N/A	N/A	N/A	N/A
18	EA IOT 36/69				N/A	N/A	N/A	N/A
19	$EA MOU 36				N/A	N/A	N/A	N/A
20	EA C&WF 36/69				N/A	N/A	N/A	N/A
21	$EA MOU 36				N/A	N/A	N/A	N/A
22	Amort Ass 36/69				N/A	N/A	N/A	N/A
23	$EA MOU 36				N/A	N/A	N/A	N/A
24	Other Plant 36/69				N/A	N/A	N/A	N/A
25	$EA MOU 36				N/A	N/A	N/A	N/A
26	Invtr 36/69				N/A	N/A	N/A	N/A
27	$EA MOU 36				N/A	N/A	N/A	N/A
28	CWC 36/69				N/A	N/A	N/A	N/A
29	$EA MOU 36				N/A	N/A	N/A	N/A
30	Total Property36/69				N/A	N/A	N/A	N/A
	B. Reserves and Deferrals							
40	Acc Depr 36/69				N/A	N/A	N/A	N/A
41	$EA MOU 36				N/A	N/A	N/A	N/A
42	Acc Amort 36/69				N/A	N/A	N/A	N/A
43	$EA MOU 36				N/A	N/A	N/A	N/A
44	Ct Def IncTax 36/69				N/A	N/A	N/A	N/A
45	$EA MOU 36				N/A	N/A	N/A	N/A
46	NoC Def IncTax36/69				N/A	N/A	N/A	N/A
47	$EA MOU 36				N/A	N/A	N/A	N/A
48	All Other-Net 36/69				N/A	N/A	N/A	N/A
49	$EA MOU 36				N/A	N/A	N/A	N/A
50	Tot Res & Def 36/69				N/A	N/A	N/A	N/A
51	Net EA Inv 36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive Switching (j)	Traffic Sensitive EqualAccess (k)	Traffic Sensitive Transport (l)	Traffic Sensitive Information (m)	Total Traffic Sen (n)	Special Access (o)
	I. Equal Access							
	A. Property							
10	GSF 36/69	N/A			N/A	N/A		N/A
11	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12	EA COE Cat 2 36/69	N/A			N/A	N/A		N/A
13	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
14	EA COE Cat 3 36/69	N/A			N/A	N/A		N/A
15	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
16	EA Oth COE 36/69	N/A			N/A	N/A		N/A
17	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
18	EA IOT 36/69	N/A			N/A	N/A		N/A
19	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
20	EA C&WF 36/69	N/A			N/A	N/A		N/A
21	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
22	Amort Ass 36/69	N/A			N/A	N/A		N/A
23	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
24	Other Plant 36/69	N/A			N/A	N/A		N/A
25	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
26	Invtr 36/69	N/A			N/A	N/A		N/A
27	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
28	CWC 36/69	N/A			N/A	N/A		N/A
29	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
30	Total Property36/69	N/A			N/A	N/A		N/A
	B. Reserves and Deferrals							
40	Acc Depr 36/69	N/A			N/A	N/A		N/A
41	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
42	Acc Amort 36/69	N/A			N/A	N/A		N/A
43	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
44	Ct Def IncTax 36/69	N/A			N/A	N/A		N/A
45	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
46	NoC Def IncTax36/69	N/A			N/A	N/A		N/A
47	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
48	All Other-Net 36/69	N/A			N/A	N/A		N/A
49	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
50	Tot Res & Def 36/69	N/A			N/A	N/A		N/A
51	Net EA Inv 36/69	N/A			N/A	N/A		N/A

FCC REPORT 43-04
ARMIS ACCESS REPORT
Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION X
TABLE I
PAGE 1.3 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	I. Equal Access			
	A. Property			
10	GSF 36/69		N/A	N/A
11	$EA MOU 36	N/A	N/A	N/A
12	EA COE Cat 2 36/69		N/A	N/A
13	$EA MOU 36	N/A	N/A	N/A
14	EA COE Cat 3 36/69		N/A	N/A
15	$EA MOU 36	N/A	N/A	N/A
16	EA Oth COE 36/69		N/A	N/A
17	$EA MOU 36	N/A	N/A	N/A
18	EA IOT 36/69		N/A	N/A
19	$EA MOU 36	N/A	N/A	N/A
20	EA C&WP 36/69		N/A	N/A
21	$EA MOU 36	N/A	N/A	N/A
22	Amort Ass 36/69		N/A	N/A
23	$EA MOU 36	N/A	N/A	N/A
24	Other Plant 36/69		N/A	N/A
25	$EA MOU 36	N/A	N/A	N/A
26	Invtr 36/69		N/A	N/A
27	$EA MOU 36	N/A	N/A	N/A
28	CWC 36/69		N/A	N/A
29	$EA MOU 36	N/A	N/A	N/A
30	Total Property36/69		N/A	N/A
	B. Reserves and Deferrals			
40	Acc Depr 36/69		N/A	N/A
41	$EA MOU 36	N/A	N/A	N/A
42	Acc Amort 36/69		N/A	N/A
43	$EA MOU 36	N/A	N/A	N/A
44	Ct Def IncTax 36/69		N/A	N/A
45	$EA MOU 36	N/A	N/A	N/A
46	NoC Def IncTax36/69		N/A	N/A
47	$EA MOU 36	N/A	N/A	N/A
48	All Other-Net 36/69		N/A	N/A
49	$EA MOU 36	N/A	N/A	N/A
50	Tot Res & Def 36/69		N/A	N/A
51	Net Ea Inv 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	C. Operating Expenses							
60	GSF 36/69				N/A	N/A	N/A	N/A
61	$EA MOU 36				N/A	N/A	N/A	N/A
62	Network Supp 36/69				N/A	N/A	N/A	N/A
63	$EA MOU 36				N/A	N/A	N/A	N/A
64	CO Exp 36/69				N/A	N/A	N/A	N/A
65	$EA MOU 36				N/A	N/A	N/A	N/A
66	IOT Expenses 36/69				N/A	N/A	N/A	N/A
67	$EA MOU 36				N/A	N/A	N/A	N/A
68	C&WF Expenses 36/69				N/A	N/A	N/A	N/A
69	$EA MOU 36				N/A	N/A	N/A	N/A
70	Oth PP&E Exp 36/69				N/A	N/A	N/A	N/A
71	$EA MOU 36				N/A	N/A	N/A	N/A
72	Network Oper 36/69				N/A	N/A	N/A	N/A
73	$EA MOU 36				N/A	N/A	N/A	N/A
74	Access Exp 36/69				N/A	N/A	N/A	N/A
75	$EA MOU 36				N/A	N/A	N/A	N/A
76	Depr/Amort 36/69				N/A	N/A	N/A	N/A
77	$EA MOU 36				N/A	N/A	N/A	N/A
78	Marketing Exp 36/69				N/A	N/A	N/A	N/A
79	$EA MOU 36				N/A	N/A	N/A	N/A
80	Services Exp 36/69				N/A	N/A	N/A	N/A
81	$EA MOU 36				N/A	N/A	N/A	N/A
82	Corp Op Exp 36/69				N/A	N/A	N/A	N/A
83	$EA MOU 36				N/A	N/A	N/A	N/A
84	Tot Expenses 36/69				N/A	N/A	N/A	N/A
	D. Deferred Charges and Expense Amortization							
90	DChg Beg Bal 36/69				N/A	N/A	N/A	N/A
91	Additions 36/69				N/A	N/A	N/A	N/A
92	Deductions 36/69				N/A	N/A	N/A	N/A
93	Avg Bal for Yr36/69				N/A	N/A	N/A	N/A

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90
xxxxxxxxxxxx VERSION
SUBMISSION X
TABLE I
PAGE 2.2 OF 30.3

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	C. Operating Expenses							
60	GSF 36/69	N/A			N/A	N/A		N/A
61	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
62	Network Supp 36/69	N/A			N/A	N/A		N/A
63	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
64	CO Exp 36/69	N/A			N/A	N/A		N/A
65	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
66	IOT Exp 36/69	N/A			N/A	N/A		N/A
67	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
68	C&WF Exp 36/69	N/A			N/A	N/A		N/A
69	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
70	Oth PP&E Exp 36/69	N/A			N/A	N/A		N/A
71	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
72	Network Oper 36/69	N/A			N/A	N/A		N/A
73	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
74	Access Exp 36/69	N/A			N/A	N/A		N/A
75	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
76	Depr/Amort 36/69	N/A			N/A	N/A		N/A
77	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
78	Marketing Exp 36/69	N/A			N/A	N/A		N/A
79	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
80	Services Exp 36/69	N/A			N/A	N/A		N/A
81	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
82	Corp Op Exp 36/69	N/A			N/A	N/A		N/A
83	$EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
84	Tot Expenses 36/69	N/A			N/A	N/A		N/A
	D. Deferred Charges and Expense Amortization							
90	DChg Beg Bal 36/69	N/A			N/A	N/A		N/A
91	Additions 36/69	N/A			N/A	N/A		N/A
92	Deductions 36/69	N/A			N/A	N/A		N/A
93	Avg Bal for Yr36/69	N/A			N/A	N/A		N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	C. Operating Expenses			
60	GSF 36/69		N/A	N/A
61	$EA MOU	N/A	N/A	N/A
62	Network Supp 36/69		N/A	N/A
63	$EA MOU 36	N/A	N/A	N/A
64	CO Exp 36/69		N/A	N/A
65	$EA MOU 36	N/A	N/A	N/A
66	IOT Expenses 36/69		N/A	N/A
67	$EA MOU 36	N/A	N/A	N/A
68	C&WF Expenses 36/69		N/A	N/A
69	$EA MOU 36	N/A	N/A	N/A
70	Oth PP&E Exp 36/69		N/A	N/A
71	$EA MOU 36	N/A	N/A	N/A
72	Network Oper 36/69		N/A	N/A
73	$EA MOU 36	N/A	N/A	N/A
74	Access Exp 36/69		N/A	N/A
75	$EA MOU 36	N/A	N/A	N/A
76	Depr/Amort 36/69		N/A	N/A
77	$EA MOU 36	N/A	N/A	N/A
78	Marketing Exp 36/69		N/A	N/A
79	$EA MOU 36	N/A	N/A	N/A
80	Services Exp 36/69		N/A	N/A
81	$EA MOU 36	N/A	N/A	N/A
82	Corp Op Exp 36/69		N/A	N/A
83	$EA MOU 36	N/A	N/A	N/A
84	Tot Expenses 36/69		N/A	N/A
	D. Deferred Charges and Expense Amortization			
90	DChg Beg Bal 36/69		N/A	N/A
91	Additions 36/69		N/A	N/A
92	Deductions 36/69		N/A	N/A
93	Avg Bal for Yr36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	II. Telecommunications Plant							
	A. General Support Facilities (GSF)							
1000	GSF 36/69							N/A
1001	#Big 3 Exp Cls A 36				N/A	N/A	N/A	N/A
1002	#Inv Cls B 36				N/A	N/A	N/A	N/A
1003	#Inv 69	N/A	N/A					N/A
	B. Central Office Equipment (COE)							
	1. Category 1 COE - Operator Systems Equipment							
	a) Switchboards at Toll Centers							
1100	Separate Toll 36/69				N/A	N/A	N/A	N/A
1101	#WSWS 36				N/A	N/A	N/A	N/A
1102	Separate Lcl 36/69				N/A	N/A	N/A	N/A
1103	#WSWS 36				N/A	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69				N/A	N/A	N/A	N/A
1105	#WSWS 36				N/A	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69				N/A	N/A	N/A	N/A
1107	#WSWS 36				N/A	N/A	N/A	N/A
1108	Separate DSA 36/69				N/A	N/A	N/A	N/A
1109	#WSWS 36				N/A	N/A	N/A	N/A
1110	Separate DSB 36/69				N/A	N/A	N/A	N/A
1111	#WSWS 36				N/A	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69				N/A	N/A	N/A	N/A
	b) Service Observing Boards							
1120	Joint SOB 36		N/A	N/A	N/A	N/A	N/A	N/A
1121	#Exchange SOU 36		N/A	N/A	N/A	N/A	N/A	N/A
1122	#Toll SOU 36		N/A	N/A	N/A	N/A	N/A	N/A
1123	Exchange 36			N/A	N/A	N/A	N/A	N/A
1124	Joint Toll 36				N/A	N/A	N/A	N/A
1125	Sep Toll SOB 36				N/A	N/A	N/A	N/A
1126	Tot Toll SOB 36/69				N/A	N/A	N/A	N/A
1127	#Toll MOU 36				N/A	N/A	N/A	N/A
1128	#COE 1,2 & 3 69	N/A	N/A		N/A	N/A	N/A	N/A
1129	Tot SOB 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	II. Telecommunications Plant							
	A. General Support Facilities (GSF)							
1000	GSF 36/69			N/A				
1001	#Big 3 Exp Cls A 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1002	#Inv Cls B 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1003	#Inv 69			N/A				
	B. Central Office Equipment (COE)							
	1. Category 1 COE - Operator Systems Equipment							
	a) Switchboards at Toll Centers							
1100	Separate Toll 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1101	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1102	Separate Lcl 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1103	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1105	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69	N/A		N/A	N/A			N/A
1107	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1108	Separate DSA 36/69	N/A		N/A	N/A			N/A
1109	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1110	Separate DSB 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1111	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69	N/A		N/A	N/A			N/A
	b) Service Observing Boards							
1120	Joint SOB 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1121	#Exchange SOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1122	#Toll SOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1123	Exchange 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1124	Joint Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1125	Sep Toll SOB 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1126	Tot Toll SOB 36/69	N/A		N/A				N/A
1127	#Toll MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1128	#COE 1,2 & 3 69	N/A		N/A				N/A
1129	Tot SOB 36/69	N/A		N/A				N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (g)	IX (r)
	II. Telecommunications Plant			
	A. General Support Facilities (GSF)			
1000	GSF 36/69			
1001	#Big 3 Exp Cls A 36	N/A	N/A	N/A
1002	#Inv Cls B 36	N/A	N/A	N/A
1003	#Inv 69			
	B. Central Office Equipment (COE)			
	1. Category 1 COE - Operator Systems Equipment			
	a) Switchboards at Toll Centers			
1100	Separate Toll 36/69	N/A	N/A	
1101	#WSWS 36	N/A	N/A	N/A
1102	Separate Lcl 36/69	N/A	N/A	
1103	#WSWS 36	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69	N/A	N/A	
1105	#WSWS 36	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69		N/A	
1107	#WSWS 36	N/A	N/A	N/A
1108	Separate DSA 36/69		N/A	
1109	#WSWS 36	N/A	N/A	N/A
1110	Separate DSB 36/69	N/A	N/A	
1111	#WSWS 36	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69		N/A	
	b) Service Observing Boards			
1120	Joint SOB 36	N/A	N/A	N/A
1121	#Exchange SOU 36	N/A	N/A	N/A
1122	#Toll SOU 36	N/A	N/A	N/A
1123	Exchange 36	N/A	N/A	N/A
1124	Joint Toll 36	N/A	N/A	N/A
1125	Sep Toll SOB 36	N/A	N/A	N/A
1126	Tot Toll SOB 36/69		N/A	
1127	#Toll MOU 36	N/A	N/A	N/A
1128	#COE 1,2 & 3 69		N/A	
1129	Tot SOB 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	c) Auxiliary Service Boards							
1130	Separate DA 36/69				N/A	N/A	N/A	N/A
1131	#Toll WSWS 36				N/A	N/A	N/A	N/A
1132	#Oth WSWS 36				N/A	N/A	N/A	N/A
1133	Toll DA 36/69				N/A	N/A	N/A	N/A
1134	#Toll WSWS 36				N/A	N/A	N/A	N/A
1135	Other DA 36/69				N/A	N/A	N/A	N/A
1136	#Oth WSWS 36				N/A	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69				N/A	N/A	N/A	N/A
1138	#Sub Line MOU 36				N/A	N/A	N/A	N/A
1139	#DA WSWS 36				N/A	N/A	N/A	N/A
1140	#Int WSWS 36				N/A	N/A	N/A	N/A
1141	#Rate/Route WSWS 36				N/A	N/A	N/A	N/A
1142	#Toll WSWS 36				N/A	N/A	N/A	N/A
1143	#Oth WSWS 36				N/A	N/A	N/A	N/A
1144	Joint ASB DA 36/69				N/A	N/A	N/A	N/A
1145	Toll ASB DA 36				N/A	N/A	N/A	N/A
1146	#Toll WSWS 36				N/A	N/A	N/A	N/A
1147	Oth ASB DA 36				N/A	N/A	N/A	N/A
1148	#Oth WSWS 36				N/A	N/A	N/A	N/A
1149	Joint ASB Int 36/69				N/A	N/A	N/A	N/A
1150	#Sub Line MOU 36				N/A	N/A	N/A	N/A
1151	Rate & Route 36/69				N/A	N/A	N/A	N/A
1152	#Rate/Route WSWS 36				N/A	N/A	N/A	N/A
1153	Tot Joint ASB 36/69				N/A	N/A	N/A	N/A
1154	Tot ASB 36/69				N/A	N/A	N/A	N/A
	d) Traffic Service Positions							
1160	Operator TSPS 36/69				N/A	N/A	N/A	N/A
1161	#WSWS 36				N/A	N/A	N/A	N/A
1162	RTA 36/69				N/A	N/A	N/A	N/A
1163	#Proc Real Tme 36				N/A	N/A	N/A	N/A
1164	Remain Inv 36/69				N/A	N/A	N/A	N/A
1165	#Proc Real Tme 36				N/A	N/A	N/A	N/A
1166	Other TSP 36/69				N/A	N/A	N/A	N/A
1167	#WSWS 36				N/A	N/A	N/A	N/A
1168	Tot TSP 36/69				N/A	N/A	N/A	N/A
1170	Tot Cat 1 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	c) Auxiliary Service Boards							
1130	Separate DA 36/69	N/A	N/A	N/A	N/A			N/A
1131	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1132	#Oth WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1133	Toll DA 36/69	N/A	N/A	N/A	N/A			N/A
1134	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1135	Other DA 36/69	N/A	N/A	N/A	N/A			N/A
1136	#Oth WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69	N/A		N/A	N/A	N/A		N/A
1138	#Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1139	#DA WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1140	#Int WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1141	#Rate/Route WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1142	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1143	#Oth WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1144	Joint ASB DA 36/69	N/A	N/A	N/A	N/A			N/A
1145	Toll ASB DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1146	#TOLL WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1147	Oth ASB DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1148	#OTH WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1149	Joint ASB Int 36/69	N/A		N/A	N/A	N/A		N/A
1150	#Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1151	Rate & Route 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1152	#Rate/Route WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1153	Tot Joint ASB 36/69	N/A		N/A	N/A			N/A
1154	Tot ASB 36/69	N/A		N/A	N/A			N/A
	d) Traffic Service Positions							
1160	Operator TSPS 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1161	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1162	RTA 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1163	#Proc Real Tme 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1164	Remain Inv 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1165	#Proc Real Tme 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1166	Other TSP 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1167	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1168	Tot TSP 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1170	Tot Cat 1 36/69	N/A		N/A				N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	c) Auxiliary Service Boards			
1130	Separate DA 36/69		N/A	N/A
1131	#Toll WSWS 36	N/A	N/A	N/A
1132	#Oth WSWS 36	N/A	N/A	N/A
1133	Toll DA 36/69		N/A	N/A
1134	#Toll WSWS 36	N/A	N/A	N/A
1135	Other DA 36/69		N/A	N/A
1136	#Oth WSWS 36	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69		N/A	N/A
1138	#Sub Line MOU 36	N/A	N/A	N/A
1139	#DA WSWS 36	N/A	N/A	N/A
1140	#Int WSWS 36	N/A	N/A	N/A
1141	#Rate/Route WSWS 36	N/A	N/A	N/A
1142	#Toll WSWS 36	N/A	N/A	N/A
1143	#Oth WSWS 36	N/A	N/A	N/A
1144	Joint ASB DA 36/69		N/A	N/A
1145	Toll ASB DA 36	N/A	N/A	N/A
1146	#TOLL WSWS 36	N/A	N/A	N/A
1147	Oth ASB DA 36	N/A	N/A	N/A
1148	#Oth WSWS 36	N/A	N/A	N/A
1149	Joint ASB Int 36/69		N/A	N/A
1150	#Sub Line MOU 36	N/A	N/A	N/A
1151	Rate & Route 36/69	N/A	N/A	
1152	#Rate/Route WSWS 36	N/A	N/A	N/A
1153	Tot Joint ASB 36/69		N/A	
1154	Tot ASB 36/69		N/A	
	d) Traffic Service Positions			
1160	Operator TSPS 36/69	N/A	N/A	
1161	#WSWS 36	N/A	N/A	N/A
1162	RTA 36/69	N/A	N/A	
1163	#Proc Real Tme 36	N/A	N/A	N/A
1164	Remain Inv 36/69	N/A	N/A	
1165	#Proc Real Tme 36	N/A	N/A	N/A
1166	Other TSP 36/69	N/A	N/A	
1167	#WSWS 36	N/A	N/A	N/A
1168	Tot TSP 36/69	N/A	N/A	
1170	Tot Cat 1 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Category 2 COE - Tandem Switching Equipment							
1200	Direct PL 36				N/A	N/A	N/A	N/A
1201	Direct Message 36				N/A	N/A	N/A	N/A
1202	Joint 36				N/A	N/A	N/A	N/A
1203	#Tandem MOU 36				N/A	N/A	N/A	N/A
1204	Tot Cat 2 36/69				N/A	N/A	N/A	N/A
	3. Category 3 COE - Local Switching Equipment							
1210	Direct PL 36				N/A	N/A	N/A	N/A
1211	Direct Message 36				N/A	N/A	N/A	N/A
1212	Joint 36				N/A	N/A	N/A	N/A
1213	#IAF 36 %				N/A	N/A	N/A	N/A
1214	#CAF 36 %				N/A	N/A	N/A	N/A
1215	#A Component 36 %		N/A	N/A	N/A	N/A	N/A	N/A
1216	#DEM 36				N/A	N/A	N/A	N/A
1217	#B Component 36 %		N/A	N/A	N/A	N/A	N/A	N/A
1219	Tot Cat 3 36/69				N/A	N/A	N/A	N/A
	4. Category 4 COE - Circuit Equipment							
	a) Category 4.1 COE - Exchange Circuit Equipment							
	(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment							
1220	Direct PL 36				N/A	N/A	N/A	N/A
1221	Direct Message 36				N/A	N/A	N/A	N/A
1222	Joint 36				N/A	N/A	N/A	N/A
1223	#MOU 36				N/A	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Category 2 COE - Tandem Switching Equipment							
1200	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1201	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1202	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1203	$Tandem MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1204	Tot Cat 2 36/69	N/A	N/A	N/A		N/A		N/A
	3. Category 3 COE - Local Switching Equipment							
1210	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1211	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1212	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1213	$IAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1214	$CAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1215	$A Component 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1216	$DEM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1217	$B Component 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1219	Tot Cat 3 36/69	N/A		N/A		N/A		
	4. Category 4 COE - Circuit Equipment							
	a) Category 4.1 COE - Exchange Circuit Equipment							
	(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment							
1220	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1221	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1222	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1223	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69	N/A	N/A	N/A		N/A		

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

2. Category 2 COE - Tandem Switching Equipment

1200	Direct PL 36	N/A	N/A	N/A
1201	Direct Message 36	N/A	N/A	N/A
1202	Joint 36	N/A	N/A	N/A
1203	#Tandem MOU 36	N/A	N/A	N/A
1204	Tot Cat 2 36/69		N/A	

3. Category 3 COE - Local Switching Equipment

1210	Direct PL 36	N/A	N/A	N/A
1211	Direct Message 36	N/A	N/A	N/A
1212	Joint 36	N/A	N/A	N/A
1213	#IAF 36 %	N/A	N/A	N/A
1214	#CAF 36 %	N/A	N/A	N/A
1215	#A Component 36 %	N/A	N/A	N/A
1216	#DEM 36	N/A	N/A	N/A
1217	#B Component 36 %	N/A	N/A	N/A
1219	Tot Cat 3 36/69		N/A	N/A

4. Category 4 COE - Circuit Equipment

a) Category 4.1 COE - Exchange Circuit Equipment

(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment

1220	Direct PL 36	N/A	N/A	N/A
1221	Direct Message 36	N/A	N/A	N/A
1222	Joint 36	N/A	N/A	N/A
1223	#MOU 36	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Common Line Inside Wire (f)	Common Line BFP (g)	Common Line CPE (h)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)							
	(a) Basic Non-Wideband Category 4.12 COE							
1230	Direct PL 36				N/A	N/A	N/A	N/A
1231	Direct Message 36				N/A	N/A	N/A	N/A
1232	Joint 36				N/A	N/A	N/A	N/A
1233	$MOU 36				N/A	N/A	N/A	N/A
1234	Tot Bas NonW 36				N/A	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE							
1240	Direct PL 36				N/A	N/A	N/A	N/A
1241	TWX 36				N/A	N/A	N/A	N/A
1242	$TWX MOU 36				N/A	N/A	N/A	N/A
1243	Tot Sp NonW 36				N/A	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE							
1250	Direct PL 36				N/A	N/A	N/A	N/A
1251	Direct Message 36				N/A	N/A	N/A	N/A
1252	Joint 36				N/A	N/A	N/A	N/A
1253	$MOU 36				N/A	N/A	N/A	N/A
1254	Tot Wide 4.12 36				N/A	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69				N/A	N/A	N/A	N/A
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband							
	(a) Basic Category 4.13 COE							
1270	$Tot Wrk Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1271	$PL/WATS Loops 36				N/A	N/A	N/A	N/A
1272	$Sub/CL Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1273	$Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1274	PL/WATS 36				N/A	N/A	N/A	N/A
1275	Sub/Common Line 36				N/A	N/A	N/A	N/A
1276	$LAF 36 %				N/A	N/A	N/A	N/A
1277	Tot Basic 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)							
	(a) Basic Non-Wideband Category 4.12 COE							
1230	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1231	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1232	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1233	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1234	Tot Bas NonW 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE							
1240	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1241	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1242	$TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1243	Tot Sp NonW 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE							
1250	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1251	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1252	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1253	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1254	Tot Wide 4.12 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69	N/A	N/A	N/A		N/A		
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband							
	(a) Basic Category 4.13 COE							
1270	$Tot Wrk Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1271	$PL/WATS Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1272	$Sub/CL Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1273	$Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1274	PL/WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1275	Sub/Common Line 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1276	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1277	Tot Basic 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)			
	(a) Basic Non-Wideband Category 4.12 COE			
1230	Direct PL 36	N/A	N/A	N/A
1231	Direct Message 36	N/A	N/A	N/A
1232	Joint 36	N/A	N/A	N/A
1233	#MOU 36	N/A	N/A	N/A
1234	Tot Bas NonW 36	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE			
1240	Direct PL 36	N/A	N/A	N/A
1241	TWX 36	N/A	N/A	N/A
1242	#TWX MOU 36	N/A	N/A	N/A
1243	Tot Sp NonW 36	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE			
1250	Direct PL 36	N/A	N/A	N/A
1251	Direct Message 36	N/A	N/A	N/A
1252	Joint 36	N/A	N/A	N/A
1253	#MOU 36	N/A	N/A	N/A
1254	Tot Wide 4.12 36	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69		N/A	
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband			
	(a) Basic Category 4.13 COE			
1270	#Tot Wrk Loop 36	N/A	N/A	N/A
1271	#PL/WATS Loops 36	N/A	N/A	N/A
1272	#Sub/GL Loops 36	N/A	N/A	N/A
1273	#Cost Per Loop 36	N/A	N/A	N/A
1274	PL/WATS 36	N/A	N/A	N/A
1275	Sub/Common Line 36	N/A	N/A	N/A
1276	#LAF 36 %	N/A	N/A	N/A
1277	Tot Basic 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(b) Special Category 4.13 COE							
1280	Direct PL 36				N/A	N/A	N/A	N/A
1281	TWX 36				N/A	N/A	N/A	N/A
1282	#TWX MOU 36				N/A	N/A	N/A	N/A
	[redacted]							
1283	Tot Sp 4.13 36				N/A	N/A	N/A	N/A
	[redacted]							
1290	Tot Cat 4.13 36/69					N/A		N/A
1300	Tot Cat 4.1 36/69					N/A		N/A
	b) Category 4.2 COE-Interexchange Circuit Equipment							
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use							
1310	Furn to Other 36/69		N/A		N/A	N/A	N/A	N/A
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service							
1320	Direct PL 36				N/A	N/A	N/A	N/A
1321	Direct Message 36				N/A	N/A	N/A	N/A
1322	Joint 36				N/A	N/A	N/A	N/A
1323	#CMM 36				N/A	N/A	N/A	N/A
	[redacted]							
1324	Tot Cat 4.22 36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 7.2 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(b) Special Category 4.13 COE							
1280	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1281	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1282	$TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1283	Tot Sp 4.13 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1290	Tot Cat 4.13 36/69		N/A	N/A	N/A	N/A	N/A	
1300	Tot Cat 4.1 36/69		N/A	N/A		N/A		
	b) Category 4.2 COE-Interexchange Circuit Equipment							
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use							
1310	Furn to Other 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service							
1320	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1321	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1322	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1323	$CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1324	Tot Cat 4.22 36/69	N/A	N/A	N/A		N/A		

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (D)	Billing & Collection (G)	IX (I)
	(b) Special Category 4.13 COE			
1280	Direct PL 36	N/A	N/A	N/A
1281	TWX 36	N/A	N/A	N/A
1282	$TWX MOU 36	N/A	N/A	N/A
1283	Tot Sp 4.13 36	N/A	N/A	N/A
1290	Tot Cat 4.13 36/69		N/A	N/A
1300	Tot Cat 4.1 36/69		N/A	
	b) Category 4.2 COE-Interexchange Circuit Equipment			
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use			
1310	Furn to Other 36/69	N/A	N/A	
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service			
1320	Direct PL 36	N/A	N/A	N/A
1321	Direct Message 36	N/A	N/A	N/A
1322	Joint 36	N/A	N/A	N/A
1323	$CMM 36	N/A	N/A	N/A
1324	Tot Cat 4.22 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(3) Category 4.23 COE-All Other Interexchange Circuit Equipment							
	(a) Basic Category 4.23 COE							
1330	#Tot Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1331	#PL Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1332	#Direct Msg Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1333	#Joint Msg Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1334	#TWX Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1335	#Cost Per Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1336	Direct PL 36				N/A	N/A	N/A	N/A
1337	Direct Message 36				N/A	N/A	N/A	N/A
1338	Joint 36				N/A	N/A	N/A	N/A
1339	#CM 36				N/A	N/A	N/A	N/A
1340	TWX 36				N/A	N/A	N/A	N/A
1341	#Connect Min 36				N/A	N/A	N/A	N/A
1342	Tot Bas 4.23 36				N/A	N/A	N/A	N/A
	(b) Special Category 4.23 COE							
1350	Direct PL 36				N/A	N/A	N/A	N/A
1351	TWX 36				N/A	N/A	N/A	N/A
1352	#Connect Min 36				N/A	N/A	N/A	N/A
1360	Tot Sp 4.23 36				N/A	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69				N/A	N/A	N/A	N/A
1380	Tot Cat 4.2 36/69				N/A	N/A	N/A	N/A
	c) Category 4.3 COE-Host/Remote Message Circuit Equipment							
1390	WATS 36				N/A	N/A	N/A	N/A
1391	Direct Mesg 36				N/A	N/A	N/A	N/A
1392	Joint Mesg 36				N/A	N/A	N/A	N/A
1393	#MOU Miles 36				N/A	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69				N/A	N/A	N/A	N/A
1400	Tot Cat 4 36/69					N/A		N/A
1410	Tot COE 36/69					N/A		N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(3) Category 4.23 COE-All Other Interexchange Circuit Equipment							
	(a) Basic Category 4.23 COE							
1330	#Tot Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1331	#PL Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1332	#Direct Msg Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1333	#Joint Msg Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1334	#TWX Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1335	#Cost Per Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1336	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1337	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1338	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1339	#CM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1340	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1341	#Connect Min 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1342	Tot Bas 4.23 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(b) Special Category 4.23 COE							
1350	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1351	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1352	#Connect Min 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1360	Tot Sp 4.23 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69	N/A	N/A	N/A		N/A		
1380	Tot Cat 4.2 36/69	N/A	N/A	N/A		N/A		
	c) Category 4.3 COE-Host/Remote Message Circuit Equipment							
1390	WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1391	Direct Mesg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1392	Joint Mesg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1393	#MOU Miles 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69	N/A	N/A	N/A		N/A		
1400	Tot Cat 4 36/69		N/A	N/A		N/A		
1410	Tot COE 36/69			N/A				

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

(3) Category 4.23 COE-All Other Interexchange Circuit Equipment

(a) Basic Category 4.23 COE

1330	$Tot Term 36	N/A	N/A	N/A
1331	$PL Term 36	N/A	N/A	N/A
1332	$Direct Msg Term 36	N/A	N/A	N/A
1333	$Joint Msg Term 36	N/A	N/A	N/A
1334	$TWX Term 36	N/A	N/A	N/A
1335	$Cost Per Term 36	N/A	N/A	N/A
1336	Direct PL 36	N/A	N/A	N/A
1337	Direct Message 36	N/A	N/A	N/A
1338	Joint 36	N/A	N/A	N/A
1339	$CM 36	N/A	N/A	N/A
1340	TWX 36	N/A	N/A	N/A
1341	$Connect Min 36	N/A	N/A	N/A
1342	Tot Bas 4.23 36	N/A	N/A	N/A

(b) Special Category 4.23 COE

1350	Direct PL 36	N/A	N/A	N/A
1351	TWX 36	N/A	N/A	N/A
1352	$Connect Min 36	N/A	N/A	N/A
1360	Tot Sp 4.23 36	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69		N/A	
1380	Tot Cat 4.2 36/69		N/A	

c) Category 4.3 COE-Host/Remote Message Circuit Equipment

1390	WATS 36	N/A	N/A	N/A
1391	Direct Msg 36	N/A	N/A	N/A
1392	Joint Msg 36	N/A	N/A	N/A
1393	$MOU Miles 36	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69		N/A	
1400	Tot Cat 4 36/69		N/A	
1410	Tot COE 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	C. Information Origination/Termination Equipment (IOT)							
	1. Category 1 IOT-Other IOT							
	Part 36 Detail							
1420	Oth Less Coinlss 36				N/A	N/A	N/A	N/A
1421	$LAF 36 %				N/A	N/A	N/A	N/A
1422	Coinless Pay 36				N/A	N/A	N/A	N/A
1423	$LEC MOU 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
1424	Public Direct 69	N/A	N/A			N/A	N/A	N/A
1425	Other IOT 69	N/A	N/A		N/A			N/A
1426	$Equiv Lines 69	N/A	N/A		N/A		N/A	N/A
1427	$LAF 69 %	N/A	N/A		N/A	N/A	N/A	N/A
1428	Tot Cat 1 36/69							N/A
	2. Category 2 IOT-New Customer Premises Equipment							
1430	New CPE 36			N/A	N/A	N/A	N/A	N/A
1440	Tot IOT Equip 36/69							N/A
	D. Cable and Wire Facilities (C&WF)							
	1. Category 1 C&WF-Exchange Line C&WF							
1450	$Tot Wrk Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1451	$PL/WATS Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1452	$Sub/CL Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1453	$Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1454	PL/WATS 36				N/A	N/A	N/A	N/A
1455	Sub/Common Lines 36				N/A	N/A	N/A	N/A
1456	$1981 SPF 36 %				N/A	N/A	N/A	N/A
1457	$Prev Yr ATSPF 36 %				N/A	N/A	N/A	N/A
1458	$Current ATSPF 36 %				N/A	N/A	N/A	N/A
1459	$LAF 36 %				N/A	N/A	N/A	N/A
1460	Tot Cat 1 36/69					N/A		N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	C. Information Origination/Termination Equipment (IOT)							
	1. Category 1 IOT-Other IOT							
	Part 36 Detail							
1420	Oth Less Coinlss 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1421	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1422	Coinless Pay 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1423	$LEC MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
1424	Public Direct 69		N/A	N/A	N/A	N/A	N/A	N/A
1425	Other IOT 69		N/A	N/A	N/A	N/A	N/A	
1426	$Equiv Lines 69		N/A	N/A	N/A	N/A	N/A	
1427	$LAF 69 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1428	Tgt Cat 1 36/69		N/A	N/A	N/A	N/A	N/A	
	2. Category 2 IOT-New Customer Premises Equipment							
1430	New CPE 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1440	Tot IOT Equip 36/69		N/A	N/A	N/A	N/A	N/A	
	D. Cable and Wire Facilities (C&WF)							
	1. Category 1 C&WF-Exchange Line C&WF							
1450	$Tot Wrk Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1451	$PL/WATS Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1452	$Sub/CL Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1453	$Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1454	PL/WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1455	Sub/Common Lines 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1456	$1981 SPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1457	$Prev Yr ATSPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1458	$Current ATSPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1459	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1460	Tot Cat 1 36/69		N/A	N/A	N/A	N/A	N/A	

COMPANY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
STUDY AREA: XXXXXXXXXXXXXXXXXXXX
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	C. Information Origination/Termination Equipment (IOT)			
	1. Category 1 IOT-Other IOT			
	Part 36 Detail			
1420	Oth Less Coinlss 36	N/A	N/A	N/A
1421	$LAF 36 %	N/A	N/A	N/A
1422	Coinless Pay 36	N/A	N/A	N/A
1423	$LEC MOU 36	N/A	N/A	N/A
	Part 69 Detail			
1424	Public Direct 69		N/A	N/A
1425	Other IOT 69		N/A	N/A
1426	$Equiv Lines 69		N/A	N/A
1427	$LAF 69 %	N/A	N/A	N/A
1428	Tot Cat 1 36/69		N/A	N/A
	2. Category 2 IOT-New Customer Premises Equipment			
1430	New CPE 36	N/A	N/A	N/A
1440	Tot IOT Equip 36/69		N/A	N/A
	D. Cable and Wire Facilities (C&WF)			
	1. Category 1 C&WF-Exchange Line C&WF			
1450	$Tot Wrk Loop 36	N/A	N/A	N/A
1451	$PL/WATS Loops 36	N/A	N/A	N/A
1452	$Sub/CL Loops 36	N/A	N/A	N/A
1453	$Cost Per Loop 36	N/A	N/A	N/A
1454	PL/WATS 36	N/A	N/A	N/A
1455	Sub/Common Lines 36	N/A	N/A	N/A
1456	$1981 SPF 36 %	N/A	N/A	N/A
1457	$Prev Yr ATSPF 36 %	N/A	N/A	N/A
1458	$Current ATSPF 36 %	N/A	N/A	N/A
1459	$LAF 36 %	N/A	N/A	N/A
1460	Tot Cat 1 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF							
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)							
1470	Direct PL 36				N/A	N/A	N/A	N/A
1471	Direct Message 36				N/A	N/A	N/A	N/A
1472	Joint 36				N/A	N/A	N/A	N/A
1473	$MOU 36				N/A	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36				N/A	N/A	N/A	N/A
	b) Wideband Category 2 C&WF							
1480	Direct PL 36				N/A	N/A	N/A	N/A
1481	Direct Message 36				N/A	N/A	N/A	N/A
1482	Joint 36				N/A	N/A	N/A	N/A
1483	$MOU 36				N/A	N/A	N/A	N/A
1484	Tot Wide Cat 2 36				N/A	N/A	N/A	N/A
1485	Tot Cat 2 36/69				N/A	N/A	N/A	N/A
	3. Category 3 C&WF-Interexchange C&WF							
1490	$Tot Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1491	$PL Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1492	$Dir Msg Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1493	$Joint Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1494	$TWX Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1495	$Cost Per Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1496	Direct PL 36				N/A	N/A	N/A	N/A
1497	Direct Message 36				N/A	N/A	N/A	N/A
1498	Joint Message 36				N/A	N/A	N/A	N/A
1499	$CMM 36				N/A	N/A	N/A	N/A
1500	TWX 36				N/A	N/A	N/A	N/A
1501	$CMM 36				N/A	N/A	N/A	N/A
1510	Tot Cat 3 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF							
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)							
1470	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1471	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1472	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1473	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	b) Wideband Category 2 C&WF							
1480	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1481	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1482	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1483	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1484	Tot Wide Cat 2 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1485	Tot Cat 2 36/69	N/A	N/A	N/A		N/A		
	3. Category 3 C&WF-Interexchange C&WF							
1490	$Tot Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1491	$PL Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1492	$Dir Msg Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1493	$Joint Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1494	$TWX Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1495	$Cost Per Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1496	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1497	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1498	Joint Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1499	$CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1500	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1501	$CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1510	Tot Cat 3 36/69	N/A	N/A	N/A		N/A		

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF			
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)			
1470	Direct PL 36	N/A	N/A	N/A
1471	Direct Message 36	N/A	N/A	N/A
1472	Joint 36	N/A	N/A	N/A
1473	$MOU 36	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36	N/A	N/A	N/A
	b) Wideband Category 2 C&WF			
1480	Direct PL 36	N/A	N/A	N/A
1481	Direct Message 36	N/A	N/A	N/A
1482	Joint 36	N/A	N/A	N/A
1483	$MOU 36	N/A	N/A	N/A
1484	Tot Wide Cat 2 36	N/A	N/A	N/A
1485	Tot Cat 2 36/69		N/A	
	3. Category 3 C&WF-Interexchange C&WF			
1490	$Tot Cir Mi 36	N/A	N/A	N/A
1491	$PL Cir Mi 36	N/A	N/A	N/A
1492	$Dir Msg Cir Mi 36	N/A	N/A	N/A
1493	$Joint Cir Mi 36	N/A	N/A	N/A
1494	$TWX Cir Mi 36	N/A	N/A	N/A
1495	$Cost Per Cir Mi 36	N/A	N/A	N/A
1496	Direct PL 36	N/A	N/A	N/A
1497	Direct Message 36	N/A	N/A	N/A
1498	Joint Message 36	N/A	N/A	N/A
1499	$CMM 36	N/A	N/A	N/A
1500	TWX 36	N/A	N/A	N/A
1501	$CMM 36	N/A	N/A	N/A
1510	Tot Cat 3 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	4. Category 4 C&WF-Host/Remote Message C&WF							
1520	WATS 36				N/A	N/A	N/A	N/A
1521	Direct Message 36				N/A	N/A	N/A	N/A
1522	Joint Message 36				N/A	N/A	N/A	N/A
1523	$MOU Miles 36				N/A	N/A	N/A	N/A
1524	Tot Cat 4 36/69				N/A	N/A	N/A	N/A
1530	Tot C&WF 36/69					N/A		N/A
1540	Tot TelPt - AA36/69							N/A
	III. Other Telecommunications Property							
	A. Tangible Assets							
	1. Capital Leases							
2000	Direct Cap Leas 36				N/A	N/A	N/A	N/A
2001	GSF 36/69							N/A
2002	$GSF 36				N/A	N/A	N/A	N/A
2003	COE Switch 36/69					N/A		N/A
2004	$COE Switch 36				N/A	N/A	N/A	N/A
2005	Op Sys 36/69					N/A		N/A
2006	$Op Sys 36				N/A	N/A	N/A	N/A
2007	Transmission 36/69					N/A		N/A
2008	$Transmission 36				N/A	N/A	N/A	N/A
2009	IOT 36/69							N/A
2010	$IOT 36				N/A	N/A	N/A	N/A
2011	C&WF 36/69					N/A		N/A
2012	$C&WF 36				N/A	N/A	N/A	N/A
2013	Alloc Cap Lease 69	N/A	N/A					N/A
2014	$TPIS 69	N/A	N/A					N/A
2020	Tot Cap Lease 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	4. Category 4 C&WF-Host/Remote Message C&WF							
1520	WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1521	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1522	Joint Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1523	$MOU Miles 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1524	Tot Cat 4 36/69		N/A	N/A		N/A		
1530	Tot C&WF 36/69		N/A	N/A		N/A		
1540	Tot TelPt - AA36/69							
	III. Other Telecommunications Property							
	A. Tangible Assets							
	1. Capital Leases							
2000	Direct Cap Leas 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2001	GSF 36/69			N/A				
2002	$GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2003	COE Switch 36/69			N/A				
2004	$COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2005	Op Sys 36/69			N/A				
2006	$Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2007	Transmission 36/69			N/A				
2008	$Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2009	IOT 36/69		N/A	N/A	N/A	N/A	N/A	N/A
2010	$IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2011	C&WF 36/69		N/A	N/A		N/A		
2012	$C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2013	Alloc Cap Lease 69			N/A				
2014	$TPIS 69			N/A				
2020	Tot Cap Lease 36/69			N/A				

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90
XXXXXXXXXXXX VERSION
SUBMISSION X
TABLE I
PAGE 11.3 OF 30.3

COMPANY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
STUDY AREA: XXXXXXXXXXXXXXXXXXXXX
PERIOD: From mmm yyyy To mmm yyyy
COSA: XXXX

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	XX (r)
	4. Category 4 C&WF-Host/Remote Message C&WF			
1520	WATS 36	N/A	N/A	N/A
1521	Direct Message 36	N/A	N/A	N/A
1522	Joint Message 36	N/A	N/A	N/A
1523	$MOU Miles 36	N/A	N/A	N/A
1524	Tot Cat 4 36/69		N/A	
1530	Tot C&WF 36/69		N/A	
1540	Tot TelPt - AA36/69			
	III. Other Telecommunications Property			
	A. Tangible Assets			
	1. Capital Leases			
2000	Direct Cap Leas 36	N/A	N/A	N/A
2001	GSF 36/69			
2002	$GSF 36	N/A	N/A	N/A
2003	COE Switch 36/69		N/A	
2004	$COE Switch 36	N/A	N/A	N/A
2005	Op Sys 36/69		N/A	
2006	$Op Sys 36	N/A	N/A	N/A
2007	Transmission 36/69		N/A	
2008	$Transmission 36	N/A	N/A	N/A
2009	IOT 36/69		N/A	N/A
2010	$IOT 36	N/A	N/A	N/A
2011	C&WF 36/69		N/A	
2012	$C&WF 36	N/A	N/A	N/A
2013	Alloc Cap Lease 69			
2014	$TPIS 69			
2020	Tot Cap Lease 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: RFP (g)	Common Line: CPE (h)
	2. Leasehold Improvements							
2070	GSF 36				N/A	N/A	N/A	N/A
2071	$GSF 36				N/A	N/A	N/A	N/A
2080	COE Switch 36				N/A	N/A	N/A	N/A
2081	$COE Switch 36				N/A	N/A	N/A	N/A
2090	Op Sys 36				N/A	N/A	N/A	N/A
2091	$Op Sys 36				N/A	N/A	N/A	N/A
2100	Transmission 36				N/A	N/A	N/A	N/A
2101	$Transmission 36				N/A	N/A	N/A	N/A
2110	IOT 36				N/A	N/A	N/A	N/A
2111	$IOT 36				N/A	N/A	N/A	N/A
2120	C&WF 36				N/A	N/A	N/A	N/A
2121	$C&WF 36				N/A	N/A	N/A	N/A
2130	Tot Leas Imp 69	N/A	N/A					N/A
2131	$Combined Inv 69	N/A	N/A					N/A
2140	Tot Leas Imp 36/69							N/A
2150	Tot Tang Ass 36/69							N/A
	B. Intangible Assets							
2160	Intan Ass 36/69							N/A
2161	$TPIS Less Intan 36				N/A	N/A	N/A	N/A
2162	$Combined Inv 69	N/A	N/A					N/A
	C. Other Telecommunications Plant							
2190	PHFTU 36/69							N/A
2191	TPUC Short 36/69							N/A
2192	TPUC Long 36/69							N/A
2193	Tel Plant Adj 36/69							N/A
2194	$TPIS 36/69							N/A
2195	PHFTU/TPUC COE 69	N/A	N/A			N/A		N/A
2196	$COE/Inv 69	N/A	N/A			N/A		N/A
2197	PHFTU/TPUC C&WF 69	N/A	N/A			N/A		N/A
2198	$C&WF Inv 69	N/A	N/A			N/A		N/A
2199	PHFTU/TPUC GSF 69	N/A	N/A					N/A
2200	$GSF Inv 69	N/A	N/A					N/A
2201	Other 69	N/A	N/A					N/A
2202	$TPIS 69	N/A	N/A					N/A
2203	Tot Oth Plant 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Leasehold Improvements							
2070	GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2071	#GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2080	COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2081	#COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2090	Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2091	#Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2100	Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2101	#Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2110	IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2111	#IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2120	C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2121	#C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2130	Tot Leas Imp 69			N/A				
2131	#Combined Inv 69			N/A				
2140	Tot Leas Imp 36/69			N/A				
2150	Tot Tang Ass 36/69			N/A				
	B. Intangible Assets							
2160	Intan Ass 36/69			N/A				
2161	#TPIS Less Intan 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2162	#Combined Inv 69			N/A				
	C. Other Telecommunications Plant							
2190	PHFTU 36/69			N/A				
2191	TPUC Short 36/69			N/A				
2192	TPUC Long 36/69			N/A				
2193	Tel Plant Adj 36/69			N/A				
2194	#TPIS 36/69			N/A				
2195	PHFTU/TPUC COE 69			N/A				
2196	#COE Inv 69			N/A				
2197	PHFTU/TPUC C&WF 69		N/A	N/A		N/A		
2198	#C&WF Inv 69		N/A	N/A		N/A		
2199	PHFTU/TPUC GSF 69			N/A				
2200	#GSF Inv 69			N/A				
2201	Other 69			N/A				
2202	#TPIS 69			N/A				
2203	Tot Oth Plant 36/69			N/A				

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Leasehold Improvements			
2070	GSF 36	N/A	N/A	N/A
2071	$GSF 36	N/A	N/A	N/A
2080	COE Switch 36	N/A	N/A	N/A
2081	$COE Switch 36	N/A	N/A	N/A
2090	Op Sys 36	N/A	N/A	N/A
2091	$Op Sys 36	N/A	N/A	N/A
2100	Transmission 36	N/A	N/A	N/A
2101	$Transmission 36	N/A	N/A	N/A
2110	IOT 36	N/A	N/A	N/A
2111	$IOT 36	N/A	N/A	N/A
2120	C&WF 36	N/A	N/A	N/A
2121	$C&WF 36	N/A	N/A	N/A
2130	Tot Leas Imp 69			
2131	$Combined Inv 69			
2140	Tot Leas Imp 36/69			
2150	Tot Tang Ass 36/69			
	B. Intangible Assets			
2160	Intan Ass 36/69			
2161	$TPIS Less Intan 36	N/A	N/A	N/A
2162	$Combined Inv 69			
	C. Other Telecommunications Plant			
2190	PHFTU 36/69		N/A	
2191	TPUC Short 36/69		N/A	
2192	TPUC Long 36/69		N/A	
2193	Tel Plant Adj 36/69		N/A	
2194	$TPIS 36/69		N/A	
2195	PHFTU/TPUC COE 69		N/A	
2196	$COE Inv 69		N/A	
2197	PHFTU/TPUC C&WF 69		N/A	
2198	$C&WF Inv 69		N/A	
2199	PHFTU/TPUC GSF 69			
2200	$GSF Inv 69			
2201	Other 69			
2202	$TPIS 69			
2203	Tot Oth Plant 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	D. Rural Telephone Bank Stock							
2210	Cls B RTB Stk 36/69							N/A
2211	♯TPIS 36				N/A	N/A	N/A	N/A
2212	♯Combined Inv 69	N/A	N/A					N/A
	E. Inventories and Cash Working Capital							
	1. Inventories							
2220	CPE Inventories 36			N/A	N/A	N/A	N/A	N/A
2221	All Oth Invtr 36/69							N/A
2222	♯C&WF 36				N/A	N/A	N/A	N/A
2223	♯Combined Inv 69	N/A	N/A					N/A
2224	Tot Invtr 36/69							N/A
	2. Cash Working Capital							
2230	CWC 36/69	N/A	N/A					N/A
2231	♯Combined Inv 69	N/A	N/A					N/A
2240	Tot O Tel Pro 36/69							N/A
	F. FCC Investment Adjustment							
2250	FCC Inv Adj 36/69	N/A	N/A					N/A
2260	Tot Tel Pro 36/69							N/A
	IV. Reserves and Deferrals							
	A. Other Jursidictional Assets							
3000	Other Jur Ass 36			N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	D. Rural Telephone Bank Stock							
2210	Cls B RTB Stk 36/69			N/A				
2211	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2212	#Combined Inv 69			N/A				
	E. Inventories and Cash Working Capital							
	1. Inventories							
2220	CPE Inventories 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2221	All Oth Invtr 36/69			N/A				
2222	#C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2223	#Combined Inv 69			N/A				
2224	Tot Invtr 36/69			N/A				
	2. Cash Working Capital							
2230	CWC 36/69			N/A				
2231	#Combined Inv 69			N/A				
2240	Tot O Tel Pro 36/69							
	F. FCC Investment Adjustment							
2250	FCC Inv Adj 36/69			N/A				
2260	Tot Tel Pro 36/69							
	IV. Reserves and Deferrals							
	A. Other Jursidictional Assets							
3000	Other Jur Ass 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	D. Rural Telephone Bank Stock			
2210	Cls B RTB Stk 36/69			
2211	#TPIS 36	N/A	N/A	N/A
2212	#Combined Inv 69			
	E. Inventories and Cash Working Capital			
	1. Inventories			
2220	CPE Inventories 36	N/A	N/A	N/A
2221	All Oth Invtr 36/69			
2222	#C&WF 36	N/A	N/A	N/A
2223	#Combined Inv 69			
2224	Tot Invtr 36/69			
	2. Cash Working Capital			
2230	CWC 36/69			
2231	#Combined Inv 69			
2240	Tot O Tel Pro 36/69			
	F. FCC Investment Adjustment			
2250	FCC Inv Adj 36/69			
2260	Tot Tel Pro 36/69			
	IV. Reserves and Deferrals			
	A. Other Jursidictional Assets			
3000	Other Jur Ass 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	B. Accumulated Depreciation							
3010	GSF 36/69							N/A
3011	#GSF 36/69							N/A
3020	Switching 36/69					N/A		N/A
3021	#Switching 36/69					N/A		N/A
3030	Op Sys 36/69					N/A		N/A
3031	#Op Sys 36/69					N/A		N/A
3040	Transmission 36/69					N/A		N/A
3041	#Transmission 36/69					N/A		N/A
3050	IOT 36/69							N/A
3051	#IOT 36/69							N/A
3060	C&WF 36/69					N/A		N/A
3061	#C&WF 36/69					N/A		N/A
3070	PHFTU 36/69							N/A
3071	#PHFTU 36/69							N/A
3080	Tot Acc Depr 36/69							N/A
	C. Accumulated Amortization							
	1. Accumulated Amortization of Tangible Assets							
	a) Accumulated Amortization of Capital Leases							
3090	GSF 36/69							N/A
3091	#GSF 36/69							N/A
3100	Switching 36/69					N/A		N/A
3101	#Switch Eqpt 36/69					N/A		N/A
3110	Op Sys 36/69					N/A		N/A
3111	#Op Sys 36/69					N/A		N/A
3120	Transmission 36/69					N/A		N/A
3121	#Transmission 36/69					N/A		N/A
3130	IOT 36/69							N/A
3131	#IOT 36/69							N/A
3140	C&WF 36/69					N/A		N/A
3141	#C&WF 36/69					N/A		N/A
3150	Tot Cap Lease 36/69							N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	B. Accumulated Depreciation							
3010	GSF 36/69			N/A				
3011	#GSF 36/69			N/A				
3020	Switching 36/69			N/A				
3021	#Switching 36/69			N/A				
3030	Op Sys 36/69			N/A	N/A			
3031	#Op Sys 36/69			N/A	N/A			
3040	Transmission 36/69			N/A				
3041	#Transmission 36/69			N/A				
3050	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3051	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3060	C&WF 36/69		N/A	N/A		N/A		
3061	#C&WF 36/69		N/A	N/A		N/A		
3070	PHFTU 36/69			N/A				
3071	#PHFTU 36/69			N/A				
3080	Tot Acc Depr 36/69							
	C. Accumulated Amortization							
	1. Accumulated Amortization of Tangible Assets							
	a) Accumulated Amortization of Capital Leases							
3090	GSF 36/69			N/A				
3091	#GSF 36/69			N/A				
3100	Switching 36/69			N/A				
3101	#Switch Eqpt 36/69			N/A				
3110	Op Sys 36/69			N/A	N/A			N/A
3111	#Op Sys 36/69			N/A	N/A			N/A
3120	Transmission 36/69			N/A				
3121	#Transmission 36/69			N/A				
3130	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3131	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3140	C&WF 36/69		N/A	N/A		N/A		
3141	#C&WF 36/69		N/A	N/A		N/A		
3150	Tot Cap Lease 36/69			N/A				

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	B. Accumulated Depreciation			
3010	GSF 36/69			
3011	#GSF 36/69			
3020	Switching 36/69		N/A	
3021	#Switching 36/69		N/A	
3030	Op Sys 36/69		N/A	
3031	#Op Sys 36/69		N/A	
3040	Transmission 36/69		N/A	
3041	#Transmission 36/69		N/A	
3050	IOT 36/69		N/A	N/A
3051	#IOT 36/69		N/A	N/A
3060	C&WF 36/69		N/A	
3061	#C&WF 36/69		N/A	
3070	PHFTU 36/69			
3071	#PHFTU 36/69			
3080	Tot Acc Depr 36/69			
	C. Accumulated Amortization			
	1. Accumulated Amortization of Tangible Assets			
	a) Accumulated Amortization of Capital Leases			
3090	GSF 36/69			
3091	#GSF 36/69			
3100	Switching 36/69		N/A	
3101	#Switch Eqpt 36/69		N/A	
3110	Op Sys 36/69		N/A	
3111	#Op Sys 36/69		N/A	
3120	Transmission 36/69		N/A	
3121	#Transmission 36/69		N/A	
3130	IOT 36/69		N/A	N/A
3131	#IOT 36/69		N/A	N/A
3140	C&WF 36/69		N/A	
3141	#C&WF 36/69		N/A	
3150	Tot Cap Lease 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	b) Accumulated Amortization of Leasehold Improvements							
3160	GSF 36/69							N/A
3161	#GSF 36/69							N/A
3170	Switching 36/69				N/A	N/A	N/A	N/A
3171	#Switching 36/69				N/A	N/A	N/A	N/A
3180	Op Sys 36/69				N/A	N/A	N/A	N/A
3181	#Op Sys 36/69				N/A	N/A	N/A	N/A
3190	Transmission 36/69					N/A		N/A
3191	#Transmission 36/69					N/A		N/A
3200	IOT 36/69							N/A
3201	#IOT 36/69							N/A
3210	C&WF 36/69					N/A		N/A
3211	#C&WF 36/69					N/A		N/A
3220	Tot Lease Imp 36/69							N/A
3230	Tot Tang Ass 36/69							N/A
	2. Accumulated Amortization of Intangible Assets and Other Accumulated Amortization							
3240	Intangibles 36/69							N/A
3241	#Intan Ass 36/69							N/A
3250	Other 36/69							N/A
3251	#Assd Inv 36/69							N/A
3260	Tot Int/Oth 36/69							N/A
3270	Tot Acc Am 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	b) Accumulated Amortization of Leasehold Improvements							
3160	GSF 36/69			N/A				
3161	#GSF 36/69			N/A				
3170	Switching 36/69	N/A		N/A		N/A		N/A
3171	#Switching 36/69	N/A		N/A		N/A		N/A
3180	Op Sys 36/69	N/A		N/A	N/A			N/A
3181	#Op Sys 36/69	N/A		N/A	N/A			N/A
3190	Transmission 36/69		N/A	N/A		N/A		
3191	#Transmission 36/69		N/A	N/A		N/A		
3200	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3201	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3210	C&WF 36/69		N/A	N/A		N/A		
3211	#C&WF 36/69		N/A	N/A		N/A		
3220	Tot Lease Imp 36/69			N/A				
3230	Tot Tang Ass 36/69			N/A				
	2. Accumulated Amortization of Intangible Assets and Other Accumulated Amortization							
3240	Intangibles 36/69			N/A				
3241	#Intan Ass 36/69			N/A				
3250	Other 36/69			N/A				
3251	#Assd Inv 36/69			N/A				
3260	Tot Int/Oth 36/69			N/A				
3270	Tot Acc Am 36/69							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

b) Accumulated Amortization of Leasehold Improvements

3160	GSF 36/69			
3161	#GSF 36/69			
3170	Switching 36/69		N/A	
3171	#Switching 36/69		N/A	
3180	Op Sys 36/69		N/A	
3181	#Op Sys 36/69		N/A	
3190	Transmission 36/69		N/A	
3191	#Transmission 36/69		N/A	
3200	IOT 36/69		N/A	N/A
3201	#IOT 36/69		N/A	N/A
3210	C&WF 36/69		N/A	
3211	#C&WF 36/69		N/A	
3220	Tot Lease Imp 36/69			
3230	Tot Tang Ass 36/69			

2. Accumulated Amortization of Intangible Assets and Other Accumulated

3240	Intangibles 36/69			
3241	#Intan Ass 36/69			
3250	Other 36/69			
3251	#Assd Inv 36/69			
3260	Tot Int/Oth 36/69			
3270	Tot Acc Am 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	D. Net Current Deferred Operating Income Taxes							
3280	GSF 36/69							N/A
3281	#GSF 36/69							N/A
3290	Switching 36/69					N/A	—	N/A
3291	#Switching 36/69					N/A		N/A
3300	Op Sys 36/69					N/A		N/A
3301	#Op Sys 36/69					N/A		N/A
3310	Transmission 36/69					N/A		N/A
3311	#Transmission 36/69					N/A		N/A
3320	IOT 36/69							N/A
3321	#IOT 36/69							N/A
3330	C&WF 36/69					N/A		N/A
3331	#C&WF 36/69					N/A		N/A
3340	Tot Net Cur 36/69							N/A
	E. Net NonCurrent Deferred Operating Income Taxes							
3350	GSF 36/69							N/A
3351	#GSF 36/69							N/A
3360	Switching 36/69					N/A		N/A
3361	#Switching 36/69					N/A		N/A
3370	Op Sys 36/69					N/A		N/A
3371	#Op Sys 36/69					N/A	—	N/A
3380	Transmission 36/69					N/A		N/A
3381	#Transmission 36/69					N/A		N/A
3390	IOT 36/69							N/A
3391	#IOT 36/69							N/A
3400	C&WF 36/69					N/A		N/A
3401	#C&WF 36/69					N/A		N/A
3410	Tot Net NonC 36/69							N/A
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments							
3420	Oth Juris L&DCrs 36			N/A	N/A	N/A	N/A	N/A
3421	Reserve Adj 36/69	N/A	N/A					N/A
3430	Tot Res & Def 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	D. Net Current Deferred Operating Income Taxes							
3280	GSF 36/69			N/A				
3281	#GSF 36/69			N/A				
3290	Switching 36/69			N/A				
3291	#Switching 36/69			N/A				
3300	Op Sys 36/69			N/A	N/A			
3301	#Op Sys 36/69			N/A	N/A			
3310	Transmission 36/69			N/A				
3311	#Transmission 36/69			N/A				
3320	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3321	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3330	C&WF 36/69		N/A	N/A		N/A		
3331	#C&WF 36/69		N/A	N/A		N/A		
3340	Tot Net Cur 36/69							
	E. Net NonCurrent Deferred Operating Income Taxes							
3350	GSF 36/69			N/A				
3351	#GSF 36/69			N/A				
3360	Switching 36/69			N/A				
3361	#Switching 36/69			N/A				
3370	Op Sys 36/69			N/A	N/A			
3371	#Op Sys 36/69			N/A	N/A			
3380	Transmission 36/69			N/A				
3381	#Transmission 36/69			N/A				
3390	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3391	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3400	C&WF 36/69		N/A	N/A		N/A		
3401	#C&WF 36/69		N/A	N/A		N/A		
3410	Tot Net NonC 36/69							
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments							
3420	Oth Juris L&DCrs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3421	Reserve Adj 36/69			N/A				
3430	Tot Res & Def 36/69							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	D. Net Current Deferred Operating Income Taxes			
3280	GSF 36/69			
3281	$GSF 36/69			
3290	Switching 36/69		N/A	
3291	$Switching 36/69		N/A	
3300	Op Sys 36/69		N/A	
3301	$Op Sys 36/69		N/A	
3310	Transmission 36/69		N/A	
3311	$Transmission 36/69		N/A	
3320	IOT 36/69		N/A	N/A
3321	$IOT 36/69		N/A	N/A
3330	C&WF 36/69		N/A	
3331	$C&WF 36/69		N/A	
3340	Tot Net Cur 36/69			
	E. Net NonCurrent Deferred Operating Income Taxes			
3350	GSF 36/69			
3351	$GSF 36/69			
3360	Switching 36/69		N/A	
3361	$Switching 36/69		N/A	
3370	Op Sys 36/69		N/A	
3371	$Op Sys 36/69		N/A	
3380	Transmission 36/69		N/A	
3381	$Transmission 36/69		N/A	
3390	IOT 36/69		N/A	N/A
3391	$IOT 36/69		N/A	N/A
3400	C&WF 36/69		N/A	
3401	$C&WF 36/69		N/A	
3410	Tot Net NonC 36/69			
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments			
3420	Oth Juris L&DCrs 36	N/A	N/A	N/A
3421	Reserve Adj 36/69			
3430	Tot Res & Def 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	V. Operating Revenues and Certain Income Accounts							
	A. Operating Revenues							
	1. Basic Local Service Revenues							
4000	Local PL-Broad 36				N/A	N/A	N/A	N/A
4001	FX-CCSA 36				N/A	N/A	N/A	N/A
4002	Wideband Msg&TWX 36				N/A	N/A	N/A	N/A
4003	$MOU 36				N/A	N/A	N/A	N/A
4004	All Other 36				N/A	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69				N/A	N/A	N/A	N/A
	2. Network Access Service Revenues							
4010	End User 36		N/A		N/A	N/A	N/A	N/A
4011	Switched Access 36		N/A		N/A	N/A	N/A	N/A
4012	Special Access 36		N/A		N/A	N/A	N/A	N/A
4013	State Access 36			N/A	N/A	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69				N/A	N/A	N/A	N/A
	3. Long Distance Message Service Revenues							
4020	Wideband Msg&TWX 36				N/A	N/A	N/A	N/A
4021	$MOU 36				N/A	N/A	N/A	N/A
4022	LD PL-Broad 36				N/A	N/A	N/A	N/A
4023	Other LD Msg 36				N/A	N/A	N/A	N/A
4024	Tot LD Msg 36/69				N/A	N/A	N/A	N/A
	4. Miscellaneous Revenues							
4030	Directory 36			N/A	N/A	N/A	N/A	N/A
4031	Billing & Coll 36				N/A	N/A	N/A	N/A
4032	All Other Misc 36				N/A	N/A	N/A	N/A
4033	Tot Misc 36/69				N/A	N/A	N/A	N/A
	5. Uncollectible Revenues							
4040	Uncollectible 36/69				N/A	N/A	N/A	N/A
4050	Tot Rev ls Unc36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	V. Operating Revenues and Certain Income Accounts							
	A. Operating Revenues							
	1. Basic Local Service Revenues							
4000	Local PL-Broad 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4001	FX-CCSA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4002	Wideband Msg&TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4003	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4004	All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69	N/A	N/A	N/A	N/A	N/A	N/A	
	2. Network Access Service Revenues							
4010	End User 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4011	Switched Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4012	Special Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4013	State Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69							
	3. Long Distance Message Service Revenues							
4020	Wideband Msg&TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4021	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4022	LD PL-Broad 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4023	Other LD Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4024	Tot LD Msg 36/69							
	4. Miscellaneous Revenues							
4030	Directory 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4031	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4032	All Other Misc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4033	Tot Misc 36/69			N/A				
	5. Uncollectible Revenues							
4040	Uncollectible 36/69							
4050	Tot Rev 1s Unc36/69							

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90
xxxxxxxxxxx VERSION
SUBMISSION X
TABLE I
PAGE 17.3 OF 30.3

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: mmxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

V. Operating Revenues and Certain Income Accounts

A. Operating Revenues

1. Basic Local Service Revenues

4000	Local PL-Broad 36	N/A	N/A	N/A
4001	FX-CCSA 36	N/A	N/A	N/A
4002	Wideband Msg&TWX 36	N/A	N/A	N/A
4003	$MOU 36	N/A	N/A	N/A
4004	All Other 36	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69		N/A	N/A

2. Network Access Service Revenues

4010	End User 36	N/A	N/A	N/A
4011	Switched Access 36	N/A	N/A	N/A
4012	Special Access 36	N/A	N/A	N/A
4013	State Access 36	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69		N/A	

3. Long Distance Message Service Revenues

4020	Wideband Msg&TWX 36	N/A	N/A	N/A
4021	$MOU 36	N/A	N/A	N/A
4022	LD PL-Broad 36	N/A	N/A	N/A
4023	Other LD Msg 36	N/A	N/A	N/A
4024	Tot LD Msg 36/69		N/A	

4. Miscellaneous Revenues

4030	Directory 36	N/A	N/A	N/A
4031	Billing & Coll 36	N/A	N/A	N/A
4032	All Other Misc 36	N/A	N/A	N/A
4033	Tot Misc 36/69			

5. Uncollectible Revenues

4040	Uncollectible 36/69			
4050	Tot Rev ls Unc36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	B. Certain Income Accounts							
	1. Other Operating Income and Expenses							
4060	FX Different 36				N/A	N/A	N/A	N/A
4061	Direct All Other 36				N/A	N/A	N/A	N/A
4062	All Other 36				N/A	N/A	N/A	N/A
4063	#TPIS 36				N/A	N/A	N/A	N/A
4064	Tot Oth OpInc 69	N/A	N/A					N/A
4065	#Combined Inv 69	N/A	N/A					N/A
4066	Tot Oth OpInc 36/69							N/A
	2. Non-Operating Income and Expenses							
4070	AFUDC 36				N/A	N/A	N/A	N/A
4071	#Long Term PUC 36				N/A	N/A	N/A	N/A
4072	Soc/Comm 36				N/A	N/A	N/A	N/A
4073	#Corp Op Exp 36				N/A	N/A	N/A	N/A
4074	Tot NonOp Inc 69	N/A	N/A					N/A
4075	#Combined Inv 69	N/A	N/A					N/A
4076	Tot NonOp Inc 36/69							N/A
	3. Interest and Related Items							
4080	Int&Rel Items 36/69							N/A
4081	#Cap Leases 36				N/A	N/A	N/A	N/A
4082	#Combined Inv 69	N/A	N/A					N/A
	4. Extraordinary Items							
4090	Extra Items 36/69							N/A
	5. Income Effect of Jurisdictional Ratemaking Differences							
4100	Inc Effect 36			N/A	N/A	N/A	N/A	N/A
4110	Tot CIE 36/69							N/A
4120	Tot Rev Ls IEF36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ..... xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 18.2 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	B. Certain Income Accounts							
	1. Other Operating Income and Expenses							
4060	FX Different 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4061	Direct All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4062	All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4063	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4064	Tot Oth OpInc 69			N/A				
4065	#Combined Inv 69			N/A				
4066	Tot Oth OpInc 36/69			N/A				
	2. Non-Operating Income and Expenses							
4070	AFUDC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4071	#Long Term PUC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4072	Soc/Comm 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4073	#Corp Op Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4074	Tot NonOp Inc 69			N/A				
4075	#Combined Inv 69			N/A				
4076	Tot NonOp Inc 36/69			N/A				
	3. Interest and Related Items							
4080	Int&Rel Items 36/69			N/A				
4081	#Cap Leases 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4082	#Combined Inv 69			N/A				
	4. Extraordinary Items							
4090	Extra Items 36/69			N/A				
	5. Income Effect of Jurisdictional Ratemaking Differences							
4100	Inc Effect 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4110	Tot CIE 36/69			N/A				
4120	Tot Rev LsIEF 36/69			N/A				

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	B. Certain Income Accounts			
	1. Other Operating Income and Expenses			
4060	FX Different 36	N/A	N/A	N/A
4061	Direct All Other 36	N/A	N/A	N/A
4062	All Other 36	N/A	N/A	N/A
4063	#TPIS 36	N/A	N/A	N/A
4064	Tot Oth OpInc 69			
4065	#Combined Inv 69			
4066	Tot Oth OpInc 36/69			
	2. Non-Operating Income and Expenses			
4070	AFUDC 36	N/A	N/A	N/A
4071	#Long Term PUC 36	N/A	N/A	N/A
4072	Soc/Comm 36	N/A	N/A	N/A
4073	#Corp Op Exp 36	N/A	N/A	N/A
4074	Tot NonOp Inc 69			
4075	#Combined Inv 69			
4076	Tot NonOp Inc 36/69			
	3. Interest and Related Items			
4080	Int&Rel Items 36/69			
4081	#Cap Leases 36	N/A	N/A	N/A
4082	#Combined Inv 69			
	4. Extraordinary Items			
4090	Extra Items 36/69			
	5. Income Effect of Jurisdictional Ratemaking Differences			
4100	Inc Effect 36	N/A	N/A	N/A
4110	Tot CIE 36/69			
4120	Tot Rev LsIEF 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	VI. Operating Expenses and Taxes							
	A. Plant Specific Operating Expenses							
	1. Network Support and General Support Expenses							
5000	Network Supp 36/69							N/A
5001	$GSF 36				N/A	N/A	N/A	N/A
5002	$Comb Inv 69	N/A	N/A					N/A
5010	General Supp 36/69							N/A
5011	$GSF 36				N/A	N/A	N/A	N/A
5012	$GSF Inv 69	N/A	N/A					N/A
5013	Tot Sup 36/69							N/A
	2. Central Office Expenses							
5020	Direct PL 36				N/A	N/A	N/A	N/A
5021	Direct Message 36				N/A	N/A	N/A	N/A
5022	CO Exp 36				N/A	N/A	N/A	N/A
5023	$COE Inv 36				N/A	N/A	N/A	N/A
5024	CO Exp 69	N/A	N/A			N/A		N/A
5025	$COE Inv 69	N/A	N/A			N/A		N/A
5026	Tot CO Exp 36/69					N/A		N/A
	3. IOT Expenses							
	a) Other IOT Expenses							
	Part 36 Detail							
5030	Oth Less Coinlss 36				N/A	N/A	N/A	N/A
5031	$LAF 36 %				N/A	N/A	N/A	N/A
5032	Coinless Pay 36				N/A	N/A	N/A	N/A
5033	$LEC MOU 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
5040	Tot Oth IOT 69	N/A	N/A					N/A
5041	$IOT Inv 69	N/A	N/A					N/A
5042	Tot Oth IOT 36/69							N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	VI. Operating Expenses and Taxes							
	A. Plant Specific Operating Expenses							
	1. Network Support and General Support Expenses							
5000	Network Supp 36/69			N/A				
5001	$GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5002	$Comb Inv 69			N/A				
5010	General Supp 36/69			N/A				
5011	$GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5012	$GSF Inv 69			N/A				
5013	Tot Sup 36/69			N/A				
	2. Central Office Expenses							
5020	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5021	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5022	CO Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5023	$COE Inv 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5024	CO Exp 69			N/A				
5025	$COE Inv 69			N/A				
5026	Tot CO Exp 36/69			N/A				
	3. IOT Expenses							
	a) Other IOT Expenses							
	Part 36 Detail							
5030	Oth Less Coinlss 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5031	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5032	Coinless Pay 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5033	$LEC MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
5040	Tot Oth IOT 69		N/A	N/A	N/A	N/A	N/A	
5041	$IOT Inv 69		N/A	N/A	N/A	N/A	N/A	
5042	Tot Oth IOT 36/69		N/A	N/A	N/A	N/A	N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	VI. Operating Expenses and Taxes			
	A. Plant Specific Operating Expenses			
	1. Network Support and General Support Expenses			
5000	Network Supp 36/69			
5001	#GSF 36	N/A	N/A	N/A
5002	#Comb Inv 69			
5010	General Supp 36/69			
5011	#GSF 36	N/A	N/A	N/A
5012	#GSF Inv 69			
5013	Tot Sup 36/69			
	2. Central Office Expenses			
5020	Direct PL 36	N/A	N/A	N/A
5021	Direct Message 36	N/A	N/A	N/A
5022	CO Exp 36	N/A	N/A	N/A
5023	#COE Inv 36	N/A	N/A	N/A
5024	CO Exp 69		N/A	
5025	#COE Inv 69		N/A	
5026	Tot CO Exp 36/69		N/A	
	3. IOT Expenses			
	a) Other IOT Expenses			
	Part 36 Detail			
5030	Oth Less Coinlss 36	N/A	N/A	N/A
5031	#LAF 36 %	N/A	N/A	N/A
5032	Coinless Pay 36	N/A	N/A	N/A
5033	#LEC MOU 36	N/A	N/A	N/A
	Part 69 Detail			
5040	Tot Oth IOT 69		N/A	N/A
5041	#IOT Inv 69		N/A	N/A
5042	Tot Oth IOT 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	b) Customer Premises Equipment Expenses							
5050	New CPE 36			N/A	N/A	N/A	N/A	N/A
5060	Tot IOT Exp 36/69							N/A
	4. C&WF Expenses							
5070	Direct PL 36				N/A	N/A	N/A	N/A
5071	Direct Message 36				N/A	N/A	N/A	N/A
5072	C&WF 36				N/A	N/A	N/A	N/A
5073	@C&WF Inv 36				N/A	N/A	N/A	N/A
5074	C&WF 69	N/A	N/A			N/A		N/A
5075	@C&WF Inv 69	N/A	N/A			N/A		N/A
5076	Tot C&WF Exp 36/69							N/A
5080	Tot Plt Spec 36/69							N/A
	B. Plant Non-Specific Operating Expenses							
	1. Other Property Plant and Equipment Expenses							
6000	Other PP&E 36/69							N/A
6001	@TPIS 36				N/A	N/A	N/A	N/A
6002	@COE/IOT/C&WF 69	N/A	N/A					N/A
	2. Network Operations and Access Expenses							
6010	Network Oper 36/69							N/A
6011	@COE/IOT/C&WF 36/69							N/A
6012	Access 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	b) Customer Premises Equipment Expenses							
5050	New CPE 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5060	Tot IOT Exp 36/69		N/A	N/A	N/A	N/A	N/A	
	C&WF Expenses							
5070	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5071	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5072	C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5073	$C&WF Inv 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5074	C&WF 69		N/A	N/A		N/A		
5075	$C&WF Inv 69		N/A	N/A		N/A		
5076	Tot C&WF Exp 36/69		N/A	N/A		N/A		
5080	Tot Plt Spec 36/69			N/A				
	B. Plant Non-Specific Operating Expenses							
	1. Other Property Plant and Equipment Expenses							
6000	Other PP&E 36/69			N/A				
6001	$TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
6002	$COE/IOT/C&WF 69			N/A				
	2. Network Operations and Access Expenses							
6010	Network Oper 36/69			N/A				
6011	$COE/IOT/C&WF 36/69			N/A				
6012	Access 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	b) Customer Premises Equipment Expenses			
5050	New CPE 36	N/A	N/A	N/A
5060	Tot IOT Exp 36/69		N/A	N/A
	4. C&WF Expenses			
5070	Direct PL 36	N/A	N/A	N/A
5071	Direct Message 36	N/A	N/A	N/A
5072	C&WF 36	N/A	N/A	N/A
5073	$C&WF Inv 36	N/A	N/A	N/A
5074	C&WF 69		N/A	
5075	$C&WF Inv 69		N/A	
5076	Tot CW&F Exp 36/69		N/A	
5080	Tot Plt Spec 36/69			
	B. Plant Non-Specific Operating Expenses			
	1. Other Property Plant and Equipment Expenses			
6000	Other PP&E 36/69		N/A	
6001	$TPIS 36	N/A	N/A	N/A
6002	$COE/IOT/C&WF 69		N/A	
	2. Network Operations and Access Expenses			
6010	Network Oper 36/69		N/A	
6011	$COE/IOT/C&WF 36/69		N/A	
6012	Access 36/69	N/A	N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	3. Depreciation and Amortization Expenses							
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service							
6020	GSF 36/69							N/A
6021	*GSF 36/69							N/A
6030	Switching 36/69					N/A		N/A
6031	*Switching 36/69					N/A		N/A
6040	Op Sys 36/69					N/A		N/A
6041	*Op Sys 36/69					N/A		N/A
6050	Transmission 36/69					N/A		N/A
6051	*Transmission 36/69					N/A		N/A
6060	IOT 36/69							N/A
6061	*IOT 36/69							N/A
6070	C&WF 36/69					N/A		N/A
6071	*C&WF 36/69					N/A		N/A
6080	PHFTU 36/69							N/A
6081	*PHFTU 36/69							N/A
6090	Tot Dep Plant 36/69							N/A
	b) Amortization Expenses of Tangible Assets							
	(1) Amortization Expenses of Capital Leases							
6100	GSF 36/69							N/A
6101	*GSF 36/69							N/A
6110	Switching 36/69					N/A		N/A
6111	*Switching 36/69					N/A		N/A
6120	Op Sys 36/69					N/A		N/A
6121	*Op Sys 36/69					N/A		N/A
6130	Transmission 36/69					N/A		N/A
6131	*Transmission 36/69					N/A		N/A
6140	IOT 36/69							N/A
6141	*IOT 36/69							N/A
6150	C&WF 36/69					N/A		N/A
6151	*C&WF 36/69					N/A		N/A
6160	Tot Cap Lease 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	3. Depreciation and Amortization Expenses							
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service							
6020	GSF 36/69			N/A				
6021	#GSF 36/69			N/A				
6030	Switching 36/69			N/A				
6031	#Switching 36/69			N/A				
6040	Op Sys 36/69			N/A	N/A			
6041	#Op Sys 36/69			N/A	N/A			
6050	Transmission 36/69			N/A				
6051	#Transmission 36/69			N/A				
6060	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6061	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6070	C&WF 36/69		N/A	N/A		N/A		
6071	#C&WF 36/69		N/A	N/A		N/A		
6080	PHFTU 36/69			N/A				
6081	#PHFTU 36/69			N/A				
6090	Tot Dep Plant 36/69			N/A				
	b) Amortization Expenses of Tangible Assets							
	(1) Amortization Expenses of Capital Leases							
6100	GSF 36/69			N/A				
6101	#GSF 36/69			N/A				
6110	Switching 36/69			N/A				
6111	#Switching 36/69			N/A				
6120	Op Sys 36/69			N/A	N/A			
6121	#Op Sys 36/69			N/A	N/A			
6130	Transmission 36/69			N/A				
6131	#Transmission 36/69			N/A				
6140	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6141	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6150	C&WF 36/69		N/A	N/A		N/A		
6151	#C&WF 36/69		N/A	N/A		N/A		
6160	Tot Cap Lease 36/69			N/A				

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	3. Depreciation and Amortization Expenses			
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service			
6020	GSF 36/69			
6021	#GSF 36/69			
6030	Switching 36/69		N/A	
6031	#Switching 36/69		N/A	
6040	Op Sys 36/69		N/A	
6041	#Op Sys 36/69		N/A	
6050	Transmission 36/69		N/A	
6051	#Transmission 36/69		N/A	
6060	IOT 36/69		N/A	N/A
6061	#IOT 36/69		N/A	N/A
6070	C&WF 36/69		N/A	
6071	#C&WF 36/69		N/A	
6080	PHFTU 36/69			
6081	#PHFTU 36/69			
6090	Tot Dep Plant 36/69			
	b) Amortization Expenses of Tangible Assets			
	(1) Amortization Expenses of Capital Leases			
6100	GSF 36/69			
6101	#GSF 36/69			
6110	Switching 36/69		N/A	
6111	#Switching 36/69		N/A	
6120	Op Sys 36/69		N/A	
6121	#Op Sys 36/69		N/A	
6130	Transmission 36/69		N/A	
6131	#Transmission 36/69		N/A	
6140	IOT 36/69		N/A	N/A
6141	#IOT 36/69		N/A	N/A
6150	C&WF 36/69		N/A	
6151	#C&WF 36/69		N/A	
6160	Tot Cap Lease 36/69			

COMPANY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
STUDY AREA: XXXXXXXXXXXXXXXXXXXX
PERIOD: From mmm yyyy To mmm yyyy
COSA: XXXX

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(2) Amortization Expenses of Leasehold Improvements							
6170	GSF 36/69							N/A
6171	*GSF 36/69							N/A
6180	Switching 36/69				N/A	N/A	N/A	N/A
6181	*Switching 36/69				N/A	N/A	N/A	N/A
6190	Op Sys 36/69				N/A	N/A	N/A	N/A
6191	*Op Sys 36/69				N/A	N/A	N/A	N/A
6200	Transmission 36/69					N/A		N/A
6201	*Transmission 36/69					N/A		N/A
6210	IOT 36/69							N/A
6211	*IOT 36/69							N/A
6220	C&WF 36/69					N/A		N/A
6221	*C&WF 36/69							N/A
6230	Tot Leas Imp 36/69							N/A
6240	Tot Am Tang 36/69							N/A
	(3) Other Depreciation and Amortization Expenses							
6250	Intangibles 36/69							N/A
6251	*Intan Ass 36/69							N/A
6252	Other 36/69							N/A
6253	*Assd Inv 36/69							N/A
6254	Tot Other 36/69							N/A
6260	Tot Dep/Amort 36/69							N/A
6270	Tot Pl NonSp 36/69							N/A
	C. Customer Operations Expenses							
	1. Marketing Expenses							
7000	Marketing 36/69							N/A
7001	*Curr Bill Anal 36				N/A	N/A	N/A	N/A
7002	*Combined Inv 69	N/A	N/A					N/A

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION X
TABLE I
PAGE 22.2 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(2) Amortization Expenses of Leasehold Improvements							
6170	GSF 36/69			N/A				
6171	#GSF 36/69			N/A				
6180	Switching 36/69	N/A		N/A		N/A		N/A
6181	#Switching 36/69	N/A		N/A		N/A		N/A
6190	Op Sys 36/69	N/A		N/A	N/A			N/A
6191	#Op Sys 36/69	N/A		N/A	N/A			N/A
6200	Transmission 36/69		N/A	N/A		N/A		
6201	#Transmission 36/69		N/A	N/A		N/A		
6210	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6211	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6220	C&WF 36/69		N/A	N/A		N/A		
6221	#C&WF 36/69		N/A	N/A		N/A		
6230	Tot Leas Imp 36/69			N/A				
6240	Tot Am Tang 36/69			N/A				
	(3) Other Depreciation and Amortization Expenses							
6250	Intangibles 36/69			N/A				
6251	#Intan Ass 36/69			N/A				
6252	Other 36/69			N/A				
6253	#Assd Inv 36/69			N/A				
6254	Tot Other 36/69			N/A				
6260	Tot Dep/Amort 36/69			N/A				
6270	Tot Pl NonSp 36/69			N/A				
	C. Customer Operations Expenses							
	1. Marketing Expenses							
7000	Marketing 36/69			N/A				
7001	#Curr Bill Anal 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7002	#Combined Inv 69			N/A				

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

(2) Amortization Expenses of Leasehold Improvements

6170	GSF 36/69			
6171	#GSF 36/69			
6180	Switching 36/69		N/A	
6181	#Switching 36/69		N/A	
6190	Op Sys 36/69		N/A	
6191	#Op Sys 36/69		N/A	
6200	Transmission 36/69		N/A	
6201	#Transmission 36/69		N/A	
6210	IOT 36/69		N/A	N/A
6211	#IOT 36/69		N/A	N/A
6220	C&WF 36/69		N/A	
6221	#C&WF 36/69		N/A	
6230	Tot Leas Imp 36/69			
6240	Tot Am Tang 36/69			

(3) Other Depreciation and Amortization Expenses

6250	Intangibles 36/69			
6251	#Intan Ass 36/69			
6252	Other 36/69			
6253	#Assd Inv 36/69			
6254	Tot Other 36/69			
6260	Tot Dep/Amort 36/69			
6270	Tot Pl NonSp 36/69			

C. Customer Operations Expenses

1. Marketing Expenses

7000	Marketing 36/69		N/A	
7001	#Curr Bill Anal 36	N/A	N/A	N/A
7002	#Combined Inv 69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Services Expenses							
	a) Telephone Operator Services Expenses							
	Part 36 Detail							
7010	Call Completion 36				N/A	N/A	N/A	N/A
7011	#WSWS 36				N/A	N/A	N/A	N/A
7020	Intercept 36				N/A	N/A	N/A	N/A
7021	#WSWS 36				N/A	N/A	N/A	N/A
7030	DA 36				N/A	N/A	N/A	N/A
7031	#WSWS 36				N/A	N/A	N/A	N/A
7040	Other 36				N/A	N/A	N/A	N/A
7041	#WSWS 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
7050	Tel Op Direct 69	N/A	N/A		N/A	N/A	N/A	N/A
7051	Tel Op Alloc 69	N/A	N/A		N/A	N/A	N/A	N/A
7052	#WSWS 69	N/A	N/A		N/A	N/A	N/A	N/A
7060	Tot Tel Op 36/69				N/A	N/A	N/A	N/A
	b) Published Directory Listing Expenses							
7070	Classified Dir 36			N/A	N/A	N/A	N/A	N/A
7071	TWX Directory 36				N/A	N/A	N/A	N/A
7072	#TWX MOU 36				N/A	N/A	N/A	N/A
7073	Alpha/Traffic 36				N/A	N/A	N/A	N/A
7074	#Sub Line MOU 36				N/A	N/A	N/A	N/A
7075	For Directories 36				N/A	N/A	N/A	N/A
7076	Tot Pub Dir 36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Services Expenses							
	a) Telephone Operator Services Expenses							
	Part 36 Detail							
7010	Call Completion 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7011	$WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7020	Intercept 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7021	$WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7030	DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7031	$WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7040	Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7041	$WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
7050	Tel Op Direct 69	N/A		N/A	N/A			N/A
7051	Tel Op Alloc 69	N/A		N/A	N/A			N/A
7052	$WSWS 69	N/A		N/A	N/A			N/A
7060	Tot Tel Op 36/69	N/A		N/A	N/A			N/A
	b) Published Directory Listing Expenses							
7070	Classified Dir 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7071	TWX Directory 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7072	$TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7073	Alpha/Traffic 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7074	$Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7075	For Directories 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7076	Tot Pub Dir 36/69	N/A	N/A	N/A	N/A			N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

2. Services Expenses

a) Telephone Operator Services Expenses

Part 36 Detail

7010	Call Completion 36	N/A	N/A	N/A
7011	#WSWS 36	N/A	N/A	N/A
7020	Intercept 36	N/A	N/A	N/A
7021	#WSWS 36	N/A	N/A	N/A
7030	DA 36	N/A	N/A	N/A
7031	#WSWS 36	N/A	N/A	N/A
7040	Other 36	N/A	N/A	N/A
7041	#WSWS 36	N/A	N/A	N/A

Part 69 Detail

7050	Tel Op Direct 69		N/A	
7051	Tel Op Alloc 69		N/A	
7052	#WSWS 69		N/A	
7060	Tot Tel Op 36/69		N/A	

b) Published Directory Listing Expenses

7070	Classified Dir 36	N/A	N/A	N/A
7071	TWX Directory 36	N/A	N/A	N/A
7072	#TWX MOU 36	N/A	N/A	N/A
7073	Alpha/Traffic 36	N/A	N/A	N/A
7074	#Sub Line MOU 36	N/A	N/A	N/A
7075	For Directories 36	N/A	N/A	N/A
7076	Tot Pub Dir 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	c) All Other Services Expenses							
	(1) Category 1 - Local Business Office Expenses							
	Part 36 Detail							
	(a) End User Service Order Processing Expenses							
7080	$Total WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7081	$Lcl Svc Or WAC 36			N/A	N/A	N/A	N/A	N/A
7082	$Presub WAC 36		N/A		N/A	N/A	N/A	N/A
7083	$Dir Ad WAC 36			N/A	N/A	N/A	N/A	N/A
7084	$State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7085	$IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7086	$State Msg WAC 36			N/A	N/A	N/A	N/A	N/A
7087	$IS Msg WAC 36		N/A		N/A	N/A	N/A	N/A
7088	$TWX WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36			N/A	N/A	N/A	N/A	N/A
7090	Presub Svc Or 36		N/A		N/A	N/A	N/A	N/A
7091	Dir Ad Svc Or 36			N/A	N/A	N/A	N/A	N/A
7092	PL & Special 36				N/A	N/A	N/A	N/A
7093	Message Toll 36				N/A	N/A	N/A	N/A
7094	TWX 36				N/A	N/A	N/A	N/A
7095	$Bill TWX Rev 36				N/A	N/A	N/A	N/A
7096	Tot Svc Or Proc 36				N/A	N/A	N/A	N/A
	(b) End User Payment and Collection Expenses							
7100	$Tot Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7101	$State PL Bl Rev 36			N/A	N/A	N/A	N/A	N/A
7102	$IS PL Bill Rev 36		N/A		N/A	N/A	N/A	N/A
7103	$St Msg Bill Rev 36			N/A	N/A	N/A	N/A	N/A
7104	$IS Msg Bill Rev 36		N/A		N/A	N/A	N/A	N/A
7105	$Local Bill Rev 36			N/A	N/A	N/A	N/A	N/A
7106	$TWX Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7107	PL & Special 36				N/A	N/A	N/A	N/A
7108	Msg Toll 36				N/A	N/A	N/A	N/A
7109	Local 36			N/A	N/A	N/A	N/A	N/A
7110	TWX 36				N/A	N/A	N/A	N/A
7111	$Bill TWX Rev 36				N/A	N/A	N/A	N/A
7112	Tot EU Pay & Col 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)

c) All Other Services Expenses

(1) Category 1 - Local Business Office Expenses

Part 36 Detail

(a) End User Service Order Processing Expenses

7080	$Total WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7081	$Lcl Svc Or WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7082	$Presub WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7083	$Dir Ad WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7084	$State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7085	$IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7086	$State Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7087	$IS Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7088	$TWX WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7090	Presub Svc Or 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7091	Dir Ad Svc Or 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7092	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7093	Message Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7094	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7095	$Bill TWX Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7096	Tot Svc Or Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

(b) End User Payment and Collection Expenses

7100	$Tot Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7101	$State PL Bl Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7102	$IS PL Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7103	$St Msg Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7104	$IS Msg Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7105	$Local Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7106	$TWX Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7107	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7108	Msg Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7109	Local 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7110	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7111	$Bill TWX Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7112	Tot EU Pay & Col 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (z)	Total Access (p)	Billing & Collection (q)	IX (r)

c) All Other Services Expenses

(1) Category 1 - Local Business Office Expenses

Part 36 Detail

(a) End User Service Order Processing Expenses

7080	$Total WAC 36	N/A	N/A	N/A
7081	$Lcl Svc Or WAC 36	N/A	N/A	N/A
7082	$Presub WAC 36	N/A	N/A	N/A
7083	$Dir Ad WAC 36	N/A	N/A	N/A
7084	$State PL WAC 36	N/A	N/A	N/A
7085	$IS PL WAC 36	N/A	N/A	N/A
7086	$State Msg WAC 36	N/A	N/A	N/A
7087	$IS Msg WAC 36	N/A	N/A	N/A
7088	$TWX WAC 36	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36	N/A	N/A	N/A
7090	Presub Svc Or 36	N/A	N/A	N/A
7091	Dir Ad Svc Or 36	N/A	N/A	N/A
7092	PL & Special 36	N/A	N/A	N/A
7093	Message Toll 36	N/A	N/A	N/A
7094	TWX 36	N/A	N/A	N/A
7095	$Bill TWX Rev 36	N/A	N/A	N/A
7096	Tot Svc Or Proc 36	N/A	N/A	N/A

(b) End User Payment and Collection Expenses

7100	$Tot Bill Rev 36	N/A	N/A	N/A
7101	$State PL Bl Rev 36	N/A	N/A	N/A
7102	$IS PL Bill Rev 36	N/A	N/A	N/A
7103	$St Msg Bill Rev 36	N/A	N/A	N/A
7104	$IS Msg Bill Rev 36	N/A	N/A	N/A
7105	$Local Bill Rev 36	N/A	N/A	N/A
7106	$TWX Bill Rev 36	N/A	N/A	N/A
7107	PL & Special 36	N/A	N/A	N/A
7108	Msg Toll 36	N/A	N/A	N/A
7109	Local 36	N/A	N/A	N/A
7110	TWX 36	N/A	N/A	N/A
7111	$Bill TWX Rev 36	N/A	N/A	N/A
7112	Tot EU Pay & Col 36	N/A	N/A	N/A

FCC REPORT 43-04 Approved by OMB
ARMIS ACCESS REPORT 3060-0395
Expires 10/31/90
COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 25.1 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Common Line Inside Wire (f)	Common Line BFP (g)	Common Line CPE (h)
	(c) End User Billing Inquiry Expenses							
7120	#Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7121	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7122	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7123	#State Msg WAC 36			N/A	N/A	N/A	N/A	N/A
7124	#IS Msg WAC 36		N/A		N/A	N/A	N/A	N/A
7125	#TWX WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7126	#Other WAC 36			N/A	N/A	N/A	N/A	N/A
7127	PL & Special 36				N/A	N/A	N/A	N/A
7128	Msg Toll 36				N/A	N/A	N/A	N/A
7129	TWX 36				N/A	N/A	N/A	N/A
7130	#TWX Bill Rev 36				N/A	N/A	N/A	N/A
7131	Other 36			N/A	N/A	N/A	N/A	N/A
7132	Tot Bill Inq 36				N/A	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses							
7140	#Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7141	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7142	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7143	#St Switch WAC 36			N/A	N/A	N/A	N/A	N/A
7144	#IS Switch WAC 36		N/A		N/A	N/A	N/A	N/A
7145	#State B&C WAC 36			N/A	N/A	N/A	N/A	N/A
7146	#IS B&C WAC 36		N/A		N/A	N/A	N/A	N/A
7147	PL & Special 36				N/A	N/A	N/A	N/A
7148	Switched & Msg 36				N/A	N/A	N/A	N/A
7149	Billing & Coll 36				N/A	N/A	N/A	N/A
7150	Tot IC Svc Ord 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive Switching (j)	Traffic Sensitive EqualAccess (k)	Traffic Sensitive Transport (l)	Traffic Sensitive Information (m)	Total Traffic Sen (n)	Special Access (o)
	(c) End User Billing Inquiry Expenses							
7120	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7121	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7122	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7123	#State Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7124	#IS Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7125	#TWX WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7126	#Other WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7127	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7128	Msg Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7129	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7130	#TWX Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7131	Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7132	Tot Bill Inq 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses							
7140	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7141	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7142	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7143	#St Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7144	#IS Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7145	#State B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7146	#IS B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7147	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7148	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7149	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7150	Tot IC Svc Ord 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

COMPANY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
STUDY AREA: XXXXXXXXXXXXXXXXXXX
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(c) End User Billing Inquiry Expenses			
7120	$Tot WAC 36	N/A	N/A	N/A
7121	$State PL WAC 36	N/A	N/A	N/A
7122	$IS PL WAC 36	N/A	N/A	N/A
7123	$State Msg WAC 36	N/A	N/A	N/A
7124	$IS Msg WAC 36	N/A	N/A	N/A
7125	$TWX WAC 36	N/A	N/A	N/A
7126	$Other WAC 36	N/A	N/A	N/A
7127	PL & Special 36	N/A	N/A	N/A
7128	Msg Toll 36	N/A	N/A	N/A
7129	TWX 36	N/A	N/A	N/A
7130	$TWX Bill Rev 36	N/A	N/A	N/A
7131	Other 36	N/A	N/A	N/A
7132	Tot Bill Inq 36	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses			
7140	$Tot WAC 36	N/A	N/A	N/A
7141	$State PL WAC 36	N/A	N/A	N/A
7142	$IS PL WAC 36	N/A	N/A	N/A
7143	$St Switch WAC 36	N/A	N/A	N/A
7144	$IS Switch WAC 36	N/A	N/A	N/A
7145	$State B&C WAC 36	N/A	N/A	N/A
7146	$IS B&C WAC 36	N/A	N/A	N/A
7147	PL & Special 36	N/A	N/A	N/A
7148	Switched & Msg 36	N/A	N/A	N/A
7149	Billing & Coll 36	N/A	N/A	N/A
7150	Tot IC Svc Ord 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(e) Interexchange Carrier Payment and Collection Expenses							
7160	$Tot Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7161	$State PL Rev 36			N/A	N/A	N/A	N/A	N/A
7162	$IS PL Rev 36		N/A		N/A	N/A	N/A	N/A
7163	$St Switched Rev 36			N/A	N/A	N/A	N/A	N/A
7164	$IS Switched Rev 36		N/A		N/A	N/A	N/A	N/A
7165	$State B&C Rev 36			N/A	N/A	N/A	N/A	N/A
7166	$IS B&C Rev 36		N/A		N/A	N/A	N/A	N/A
7167	PL & Special 36				N/A	N/A	N/A	N/A
7168	Switched & Msg 36				N/A	N/A	N/A	N/A
7169	Billing & Coll 36				N/A	N/A	N/A	N/A
7170	Tot IC Pay & Col 36				N/A	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses							
7180	$Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7181	$State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7182	$IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7183	$St Switch WAC 36			N/A	N/A	N/A	N/A	N/A
7184	$IS Switch WAC 36		N/A		N/A	N/A	N/A	N/A
7185	$State B&C WAC 36			N/A	N/A	N/A	N/A	N/A
7186	$IS B&C WAC 36		N/A		N/A	N/A	N/A	N/A
7187	PL & Special 36				N/A	N/A	N/A	N/A
7188	Switched & Msg 36				N/A	N/A	N/A	N/A
7189	Billing & Coll 36				N/A	N/A	N/A	N/A
7190	Tot IC Bill Inq 36				N/A	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses							
7200	Coin Coll & Adm 36				N/A	N/A	N/A	N/A
7201	$Rev Deposited 36				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(e) Interexchange Carrier Payment and Collection Expenses							
7160	#Tot Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7161	#State PL Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7162	#IS PL Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7163	#St Switched Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7164	#IS Switched Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7165	#State B&C Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7166	#IS B&C Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7167	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7168	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7169	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7170	Tot IC Pay & Col 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses							
7180	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7181	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7182	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7183	#St Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7184	#IS Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7185	#State B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7186	#IS B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7187	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7188	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7189	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7190	Tot IC Bill Inq 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses							
7200	Coin Coll & Adm 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7201	#Rev Deposited 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(e) Interexchange Carrier Payment and Collection Expenses			
7160	|Tot Bill Rev 36	N/A	N/A	N/A
7161	|State PL Rev 36	N/A	N/A	N/A
7162	|IS PL Rev 36	N/A	N/A	N/A
7163	|St Switched Rev 36	N/A	N/A	N/A
7164	|IS Switched Rev 36	N/A	N/A	N/A
7165	|State B&C Rev 36	N/A	N/A	N/A
7166	|IS B&C Rev 36	N/A	N/A	N/A
7167	|PL & Special 36	N/A	N/A	N/A
7168	|Switched & Msg 36	N/A	N/A	N/A
7169	|Billing & Coll 36	N/A	N/A	N/A
7170	|Tot IC Pay & Col 36	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses			
7180	|Tot WAC 36	N/A	N/A	N/A
7181	|State PL WAC 36	N/A	N/A	N/A
7182	|IS PL WAC 36	N/A	N/A	N/A
7183	|St Switch WAC 36	N/A	N/A	N/A
7184	|IS Switch WAC 36	N/A	N/A	N/A
7185	|State B&C WAC 36	N/A	N/A	N/A
7186	|IS B&C WAC 36	N/A	N/A	N/A
7187	|PL & Special 36	N/A	N/A	N/A
7188	|Switched & Msg 36	N/A	N/A	N/A
7189	|Billing & Coll 36	N/A	N/A	N/A
7190	|Tot IC Bill Inq 36	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses			
7200	|Coin Coll & Adm 36	N/A	N/A	N/A
7201	|Rev Deposited 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	Part 69 Detail							
7202	EU Att to Co PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7203	EU Att to Co Msg 69	N/A	N/A		N/A	N/A	N/A	N/A
7204	EU Att to IC PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7205	EU Att to IC Msg 69	N/A	N/A		N/A	N/A	N/A	N/A
7206	EU SLC Bills 69	N/A	N/A		N/A	N/A		N/A
7207	EU Presub 69	N/A	N/A					N/A
7208	$Combined Inv 69	N/A	N/A					N/A
7209	EU TWX 69	N/A	N/A		N/A	N/A	N/A	N/A
7210	IC Att to PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7211	IC Switch & Msg 69	N/A	N/A					N/A
7212	$Combined Inv 69	N/A	N/A					N/A
7213	IC B&C 69	N/A	N/A		N/A	N/A	N/A	N/A
7214	Coin Coll & Adm 69	N/A	N/A			N/A	N/A	N/A
7220	Tot Cat 1 36/69							N/A

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	$Tot Msgs 36		N/A	N/A	N/A	N/A	N/A	N/A
7231	$Toll Msgs 36		N/A	N/A	N/A	N/A	N/A	N/A
7232	$Local Msgs 36			N/A	N/A	N/A	N/A	N/A
7233	Toll Ticket Proc 36				N/A	N/A	N/A	N/A
7234	$Toll Msgs 36				N/A	N/A	N/A	N/A
7235	Local Msg Proc 36			N/A	N/A	N/A	N/A	N/A
7236	Tot Msg Proc 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive Switching (j)	Traffic Sensitive EqualAccess (k)	Traffic Sensitive Transport (l)	Traffic Sensitive Information (m)	Total Traffic Sen (n)	Special Access (o)
	Part 69 Detail							
7202	EU Att to Co PL 69	N/A	N/A	N/A	N/A	N/A	N/A	
7203	EU Att to Co Msg 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7204	EU Att to IC PL 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7205	EU Att to IC Msg 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7206	EU SLC Bills 69		N/A	N/A	N/A	N/A	N/A	N/A
7207	EU Presub 69			N/A		N/A		N/A
7208	#Combined Inv 69			N/A		N/A		N/A
7209	EU TWX 69	N/A	N/A	N/A	N/A	N/A	N/A	
7210	IC Att to PL 69	N/A	N/A	N/A	N/A	N/A	N/A	
7211	IC Switch & Msg 69			N/A		N/A		N/A
7212	#Combined Inv 69			N/A		N/A		N/A
7213	IC B&C 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7214	Coin Coll & Adm 69		N/A	N/A	N/A	N/A	N/A	N/A
7220	Tot Cat 1 36/69			N/A		N/A		

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	#Tot Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7231	#Toll Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7232	#Local Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7233	Toll Ticket Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7234	#Toll Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7235	Local Msg Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7236	Tot Msg Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	Part 69 Detail			
7202	EU Att to Co PL 69		N/A	N/A
7203	EU Att to Co Msg 69	N/A	N/A	
7204	EU Att to IC PL 69	N/A		N/A
7205	EU Att to IC Msg 69	N/A		N/A
7206	EU SLC Bills 69	N/A	N/A	N/A
7207	EU Presub 69		N/A	N/A
7208	#Combined Inv 69		N/A	N/A
7209	EU TWX 69		N/A	N/A
7210	IC Att to PL 69		N/A	N/A
7211	IC Switch & Msg 69		N/A	N/A
7212	#Combined Inv 69		N/A	N/A
7213	IC B&C 69	N/A		N/A
7214	Coin Coll & Adm 69		N/A	N/A
7220	Tot Cat 1 36/69			

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	#Tot Msgs 36	N/A	N/A	N/A
7231	#Toll Msgs 36	N/A	N/A	N/A
7232	#Local Msgs 36	N/A	N/A	N/A
7233	Toll Ticket Proc 36	N/A	N/A	N/A
7234	#Toll Msgs 36	N/A	N/A	N/A
7235	Local Msg Proc 36	N/A	N/A	N/A
7236	Tot Msg Proc 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(b) Other Billing and Collecting Expenses							
7240	$Tot Curr Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7241	$Msg Toll Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7242	$PL Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7243	$TWX Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7244	$Ex & Semi Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7245		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7246		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7247	$Dir Ad Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7248		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7250		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7251	MTS Exp 36				N/A	N/A	N/A	N/A
7252	$MTS Msg 36				N/A	N/A	N/A	N/A
7253	TWX Exp 36				N/A	N/A	N/A	N/A
7254	$TWX Con 36				N/A	N/A	N/A	N/A
7255	Ex Semi & DA Exp 36			N/A	N/A	N/A	N/A	N/A
7256	PL Exp 36				N/A	N/A	N/A	N/A
7257	$PL Accounts 36				N/A	N/A	N/A	N/A
7258	EU CL A&Bill Exp 36				N/A	N/A	N/A	N/A
7259	OB&C 36				N/A	N/A	N/A	N/A
7260		N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses							
7270	Carrier Access 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
7280	SLC 69	N/A	N/A		N/A	N/A		N/A
7281	Carrier Access 69	N/A	N/A		N/A	N/A	N/A	N/A
7282	$COE/IOT/C&WF 69	N/A	N/A		N/A	N/A	N/A	N/A
7283	All Other Cat 2 69	N/A	N/A		N/A	N/A	N/A	N/A
7290	Tot Cat 2 36/69				N/A	N/A		N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(b) Other Billing and Collecting Expenses							
7240	$Tot Curr Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7241	$Msg Toll Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7242	$PL Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7243	$TWX Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7244	$EX & Semi Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7245		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7246		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7247	$Dir Ad Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7248		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7250		N/A	N/A	N/A	N/A	N/A	N/A	N/A
7251	MTS Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7252	$MTS Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7253	TWX Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7254	$TWX Con 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7255	EX Semi & DA Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7256	PL Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7257	$PL Accounts 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7258	EU CL A&Bill Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7259	OB&C 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7260		N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses							
7270	Carrier Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
7280	SLC 69		N/A	N/A	N/A	N/A	N/A	N/A
7281	Carrier Access 69	N/A		N/A				
7282	$COE/IOT/C&WF 69	N/A		N/A				
7283	All Other Cat 2 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7290	Tot Cat 2 36/69			N/A				

FCC REPORT 43-04 Approved by OMB
ARMIS ACCESS REPORT 3060-0395
Expires 10/31/90
COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 28.3 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(b) Other Billing and Collecting Expenses			
7240	#Tot Curr Users 36	N/A	N/A	N/A
7241	#MSG Toll Users 36	N/A	N/A	N/A
7242	#PL Users 36	N/A	N/A	N/A
7243	#TWX Users 36	N/A	N/A	N/A
7244	#Ex & Semi Users 36	N/A	N/A	N/A
7245		N/A	N/A	N/A
7246		N/A	N/A	N/A
7247	#Dir Ad Users 36	N/A	N/A	N/A
7248		N/A	N/A	N/A
7250		N/A	N/A	N/A
7251	MTS Exp 36	N/A	N/A	N/A
7252	#MTS Msg 36	N/A	N/A	N/A
7253	TWX Exp 36	N/A	N/A	N/A
7254	#TWX Con 36	N/A	N/A	N/A
7255	Ex Semi & DA Exp 36	N/A	N/A	N/A
7256	PL Exp 36	N/A	N/A	N/A
7257	#PL Accounts 36	N/A	N/A	N/A
7258	EU CL A&Bill Exp 36	N/A	N/A	N/A
7259	OB&C 36	N/A	N/A	N/A
7260		N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses			
7270	Carrier Access 36	N/A	N/A	N/A
	Part 69 Detail			
7280	SLC 69		N/A	N/A
7281	Carrier Access 69		N/A	N/A
7282	#COE/IOT/C&WF 69			
7283	All Other Cat 2 69	N/A		N/A
7290	Tot Cat 2 36/69			N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(3) Category 3 - All Other Customer Services Expenses							
7300	Oth Cust Svc 36/69							N/A
7301	#Tot Cat 1 & 2 36				N/A	N/A	N/A	N/A
7302	#Combined Exp 69	N/A	N/A					N/A
7310	Tot Oth C Svc 36/69							N/A
7320	Tot Cust Op 36/69							N/A
	D. Corporate Operations Expenses							
7330	EAS Settlements 36			N/A	N/A	N/A	N/A	N/A
7331	All Other 36/69							N/A
7332	#Big 3 Exp 36				N/A	N/A	N/A	N/A
7333	#Big 3 Exp 69	N/A	N/A					N/A
7334	Tot Corp Oper 36/69							N/A
	E. FCC Expense Adjustment							
7350	FCC Expense Adj 36	N/A	N/A					N/A
7351	Tot Oper Exp 36/69							N/A
	F. Operating Taxes							
	1. State and Local Taxes							
8000	St & Lcl Inc 36/69				N/A	N/A	N/A	N/A
8001	#Appr Tax Inc 36/69				N/A	N/A	N/A	N/A
8002	Direct Oth St&Lcl36				N/A	N/A	N/A	N/A
8003	All Oth St & Lcl 36				N/A	N/A	N/A	N/A
8004	#TPIS 36				N/A	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69	N/A	N/A		N/A	N/A	N/A	N/A
8006	#Combined Inv 69	N/A	N/A		N/A	N/A	N/A	N/A
8007	Tot St&Lcl Tax36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(3) Category 3 - All Other Customer Services Expenses							
7300	Oth Cust Svc 36/69			N/A				
7301	#Tot Cat 1 & 2 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7302	#Combined Exp 69			N/A				
7310	Tot Oth C Svc 36/69			N/A				
7320	Tot Cust Op 36/69			N/A				
	D. Corporate Operations Expenses							
7330	EAS Settlements 36			N/A				
7331	All Other 36/69			N/A				
7332	#Big 3 Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7333	#Big 3 Exp 69			N/A				
7334	Tot Corp Oper 36/69			N/A				
	E. FCC Expense Adjustment							
7350	FCC Expense Adj 36			N/A				
7351	Tot Oper Exp 36/69							
	F. Operating Taxes							
	1. State and Local Taxes							
8000	St & Lcl Inc 36/69							
8001	#Appr Tax Inc 36/69							
8002	Direct Oth St&Lcl36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8003	All Oth St & Lcl 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8004	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69							
8006	#Combined Inv 69							
8007	Tot St&Lcl Tax36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(3) Category 3 - All Other Customer Services Expenses			
7300	Oth Cust Svc 36/69			
7301	#Tot Cat 1 & 2 36	N/A	N/A	N/A
7302	#Combined Exp 69			
7310	Tot Oth C Svc 36/69			
7320	Tot Cust Op 36/69			
	D. Corporate Operations Expenses			
7330	EAS Settlements 36	N/A	N/A	N/A
7331	All Other 36/69			
7332	#Big 3 Exp 36	N/A	N/A	
7333	#Big 3 Exp 69			
7334	Tot Corp Oper 36/69			
	E. FCC Expense Adjustment			
7350	FCC Expense Adj 36			
7351	Tot Oper Exp 36/69			
	F. Operating Taxes			
	1. State and Local Taxes			
8000	St & Lcl Inc 36/69			
8001	#Appr Tax Inc 36/69			
8002	Direct Oth St&Lcl36	N/A	N/A	N/A
8003	All Oth St & Lcl 36	N/A	N/A	N/A
8004	#TPIS 36	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69			
8006	#Combined Inv 69			
8007	Tot St&Lcl Tax36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Federal Income Tax							
	a) Federal Income Tax Related Items							
8010	Fixed Charges 36/69							N/A
8011	$Net Invest 36				N/A	N/A	N/A	N/A
8012	$Combined Inv 69	N/A	N/A					N/A
8013	IRS Inc Adj 36/69							N/A
8014	FCC Inc Adj 36/69							N/A
8015	ITC Amort 36/69							N/A
8016	$TPIS 36				N/A	N/A	N/A	N/A
8017	$Combined Inv 69	N/A	N/A					N/A
8018	FCC ITC Adj 36/69							N/A
	b) Federal Income Tax							
8020	Fed Inc Tax 36/69				N/A	N/A	N/A	N/A
8021	$Appr Tax Inc 36/69				N/A	N/A	N/A	N/A
8030	Tot Oper Tax 36/69				N/A	N/A	N/A	N/A
	VII. Return Data							
8040	Average Net Invest				N/A	N/A	N/A	N/A
8041	Net Return	N/A	N/A		N/A	N/A	N/A	N/A
8042	Rate of Return %	N/A	N/A		N/A	N/A	N/A	N/A
8043	FCC Refund	N/A	N/A		N/A	N/A	N/A	N/A
8044	Net Return Inc Ref	N/A	N/A		N/A	N/A	N/A	N/A
8045	ROR Including Ref %	N/A	N/A		N/A	N/A	N/A	N/A
	VIII. Other Data							
9000	CCL-Transitional 69	N/A	N/A		N/A	N/A	N/A	N/A
9001	CCL-Long Term 69	N/A	N/A		N/A	N/A	N/A	N/A
9002	USF 36				N/A	N/A	N/A	N/A
9003	$Total Loop Cost 36		N/A	N/A	N/A	N/A	N/A	N/A
9004	$Work Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
9005	$Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
9006	Lifeline Connec 36				N/A	N/A	N/A	N/A
9007	$Households 36		N/A	N/A	N/A	N/A	N/A	N/A
9008	$Discount Per HH 36		N/A	N/A	N/A	N/A	N/A	N/A
9009	$Def Int Per HH 36		N/A	N/A	N/A	N/A	N/A	N/A
9010	Tot Bill Acc Lines		N/A	N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Federal Income Tax							
	a) Federal Income Tax Related Items							
8010	Fixed Charges 36/69							
8011	$Net Invest 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8012	$Combined Inv 69							
8013	IRS Inc Adj 36/69							
8014	FCC Inc Adj 36/69							
8015	ITC Amort 36/69							
8016	$TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8017	$Combined Inv 69							
8018	FCC ITC Adj 36/69							
	b) Federal Income Tax							
8020	Fed Inc Tax 36/69							
8021	$Appr Tax Inc 36/69							
8030	Tot Oper Tax 36/69							
	VII. Return Data							
8040	Average Net Invest							
8041	Net Return							
8042	Rate of Return %							
8043	FCC Refund							
8044	Net Return Inc Ref							
8045	ROR Including Ref %							
	VIII. Other Data							
9000	CCL-Transitional 69		N/A	N/A	N/A	N/A	N/A	N/A
9001	CCL-Long Term 69		N/A	N/A	N/A	N/A	N/A	N/A
9002	USF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9003	$Total Loop Cost 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9004	$Work Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9005	$Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9006	Lifeline Connec 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9007	$Households 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9008	$Discount Per HH 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9009	$Def Int Per HH 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9010	Tot Bill Acc Lines	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Federal Income Tax			
	a) Federal Income Tax Related Items			
8010	Fixed Charges 36/69			
8011	$Net Invest 36	N/A	N/A	N/A
8012	$Combined Inv 69			
8013	IRS Inc Adj 36/69			
8014	FCC Inc Adj 36/69			
8015	ITC Amort 36/69			
8016	$TPIS 36	N/A	N/A	N/A
8017	$Combined Inv 69			
8018	FCC ITC Adj 36/69			
	b) Federal Income Tax			
8020	Fed Inc Tax 36/69			
8021	$Appr Tax Inc 36/69			
8030	Tot Oper Tax 36/69			
	VII. Return Data			
8040	Average Net Invest			
8041	Net Return		N/A	N/A
8042	Rate of Return %		N/A	N/A
8043	FCC Refund		N/A	N/A
8044	Net Return Inc Ref		N/A	N/A
8045	ROR Including Ref %		N/A	N/A
	VIII. Other Data			
9000	CCL-Transitional 69		N/A	N/A
9001	CCL-Long Term 69		N/A	N/A
9002	USF 36	N/A	N/A	N/A
9003	$Total Loop Cost 36	N/A	N/A	N/A
9004	$Work Loops 36	N/A	N/A	N/A
9005	$Cost Per Loop 36	N/A	N/A	N/A
9006	Lifeline Connec 36	N/A	N/A	N/A
9007	$Households 36	N/A	N/A	N/A
9008	$Discount Per HH 36	N/A	N/A	N/A
9009	$Def Int Per HH 36	N/A	N/A	N/A
9010	Tot Bill Acc Lines	N/A	N/A	N/A

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	DEPRECIATION 1/1/89 RATES (A)	DEPRECIATION 1/1/89 RIC AMORT $ (B)	DEPRECIATION 1/1/90(1) RATES (C)	DEPRECIATION 1/1/90(1) RIC AMORT $ (D)	7/90 - 6/91 RATES (E)	7/90 - 6/91 RIC AMORT $ (F)
	RATE CATEGORIES						
100	2112 MOTOR VEHICLES						
110	2113 AIRCRAFT						
120	2115 GARAGE WORK EQPT.						
130	2116 OTHER WORK EQUIPMENT						
140	2121 BUILDINGS						
150	2122 FURNITURE						
160	2123 OFFICIAL COMM. EQPT.						
170	OFFICE SUPPORT EQPT.						
180	OFFICIAL COMM. EQPT.						
190	2124 GENERAL PURP. COMPUTERS						
200	2211 ANALOG ELEC. SWITCH						
210	2212 DIGITAL ELEC. SWITCH						
220	2215 ELECTRO MECHANICAL						
230	2220 OPERATOR SYSTEMS						
240	2231 RADIO SYSTEMS						
250	2232 CIRCUIT EQPT.						
260	ANALOG CIRCUIT EQPT.						
270	DIGITAL CIRCUIT EQPT.						
280	DIGITAL DATA SYSTEMS						
290	2351 PUBLIC TEL TERM EQPT						
300	2362 OTHER TERMINAL EQPT.						
310	TEL. & MISC.						
320	PBX - DDS						
330	PBX - OTHER						
340	2411 POLES						
350	2421 AERIAL CABLE						
360	AC - SUBSCRIBER						
370	AC - TRUNK						
380	2422 UNDERGROUND CABLE						
390	UG - SUBSCRIBER						
400	UG - TRUNK						
410	2423 BURIED CABLE						
420	2424 SUBMARINE CABLE						
430	2426 INTRABUILD. NETWORK CABLE						
440	2441 CONDUIT SYSTEMS						
450							
460							
470							
480							
490							
500	SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS	N/A		N/A		N/A	
510	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A

--------- N O T E ----------
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE
POPULATED WITH APPROPRIATE
COMPANY SPECIFIC INFORMATION

NOTE: (1) Currently prescribed rates

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	DEPRECIATION 1/1/89 RATES	DEPRECIATION 1/1/89 RIC AMORT $	DEPRECIATION 1/1/90(1) RATES	DEPRECIATION 1/1/90(1) RIC AMORT $	7/90 - 6/91 RATES	7/90 - 6/91 RIC AMORT $
	OTHER ACCOUNTS	(A)	(B)	(C)	(D)	(E)	(F)
520	2111 LAND	N/A	N/A	N/A	N/A	N/A	N/A
530	2321 STN CON. IW AMORT.	N/A		N/A		N/A	
540	MISC E.G., OTH AMORT. ACCTS	N/A		N/A		N/A	
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS	N/A		N/A		N/A	
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A
	ADJUSTMENTS TO TOTAL COMPANY:						
580	PART 64	N/A	N/A	N/A	N/A	N/A	N/A
590	BOC ADJUSTMENTS (E.G., SNFA, TP)	N/A	N/A	N/A	N/A	N/A	N/A
600	ICO ADJUSTMENTS (E.G., CPE)	N/A	N/A	N/A	N/A	N/A	N/A
610	TOTAL CO. SUBJECT TO SEPARATIONS	N/A		N/A		N/A	
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A

NOTE: (1) Currently prescribed rates

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	EFFECTIVE DATE 1/1/89 RATES (G)	1/1/89 RIC AMORT $ (H)	EFFECTIVE DATE OF 1990 RATES (I)	OF 1990 RIC AMORT $ (J)	EFFECTIVE DATE OF 1991 RATES (K)	OF 1991 RIC AMORT $ (L)
	RATE CATEGORIES						
100	2112 MOTOR VEHICLES						
110	2113 AIRCRAFT						
120	2115 GARAGE WORK EQPT.						
130	2116 OTHER WORK EQUIPMENT						
140	2121 BUILDINGS						
150	2122 FURNITURE						
160	2123 OFFICIAL COMM. EQPT.						
170	OFFICE SUPPORT EQPT.						
180	OFFICIAL COMM. EQPT.						
190	2124 GENERAL PURP. COMPUTERS						
200	2211 ANALOG ELEC. SWITCH						
210	2212 DIGITAL ELEC. SWITCH						
220	2215 ELECTRO MECHANICAL						
230	2220 OPERATOR SYSTEMS						
240	2231 RADIO SYSTEMS						
250	2232 CIRCUIT EQPT.						
260	ANALOG CIRCUIT EQPT.						
270	DIGITAL CIRCUIT EQPT.						
280	DIGITAL DATA SYSTEMS						
290	2351 PUBLIC TEL TERM EQPT						
300	2362 OTHER TERMINAL EQPT.						
310	TEL. & MISC.						
320	PBX - DDS						
330	PBX - OTHER						
340	2411 POLES						
350	2421 AERIAL CABLE						
360	AC - SUBSCRIBER						
370	AC - TRUNK						
380	2422 UNDERGROUND CABLE						
390	UG - SUBSCRIBER						
400	UG - TRUNK						
410	2423 BURIED CABLE						
420	2424 SUBMARINE CABLE						
430	2426 INTRABUILD. NETWORK CABLE						
440	2441 CONDUIT SYSTEMS						
450							
460							
470							
480							
490							
500	SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS	N/A	N/A	N/A	N/A	N/A	N/A
510	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A

--------- N O T E ----------
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE
POPULATED WITH APPROPRIATE
COMPANY SPECIFIC INFORMATION

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	EFFECTIVE DATE 1/1/89 RATES	1/1/89 RIC AMORT $	EFFECTIVE DATE OF 1990 RATES	OF 1990 RIC AMORT $	EFFECTIVE DATE OF 1991 RATES	OF 1991 RIC AMORT $
	OTHER ACCOUNTS	(G)	(H)	(I)	(J)	(K)	(L)
520	2111 LAND	N/A	N/A	N/A	N/A	N/A	N/A
530	2321 STN CON. IW AMORT.	N/A		N/A		N/A	
540	MISC E.G., OTH AMORT. ACCTS	N/A	N/A	N/A	N/A	N/A	N/A
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS	N/A	N/A	N/A	N/A	N/A	N/A
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A
	ADJUSTMENTS TO TOTAL COMPANY:						
580	PART 64	N/A	N/A	N/A	N/A	N/A	N/A
590	BOC ADJUSTMENTS (E.G., SNFA, TP)	N/A	N/A	N/A	N/A	N/A	N/A
600	ICO ADJUSTMENTS (E.G., CPE)	N/A	N/A	N/A	N/A	N/A	N/A
610	TOTAL CO. SUBJECT TO SEPARATIONS	N/A	N/A	N/A	N/A	N/A	N/A
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER	CLASS OR SUBCLASS OF PLANT	PLT IN SVC A/O 1/1/89 (M)	PLT IN SVC A/O 1/1/90 (N)	PLT IN SVC A/O 7/1/90 (O)	PLT IN SVC A/O 7/1/91 (P)	7/1/90 TO 6/30/91 TEST PERIOD ESTIMATED AVERAGE PLANT BALANCES (Q)	7/1/90 - 6/30/91 TEST PERIOD ESTIMATED EFFECT DUE TO DEPR EXP (R)	AMORT $ (S)	TOTAL (T)=R+S
		RATE CATEGORIES								
100	2112	MOTOR VEHICLES								
110	2113	AIRCRAFT								
120	2115	GARAGE WORK EQPT.								
130	2116	OTHER WORK EQUIPMENT								
140	2121	BUILDINGS								
150	2122	FURNITURE								
160	2123	OFFICIAL COMM. EQPT.								
170		OFFICE SUPPORT EQPT.								
180		OFFICIAL COMM. EQPT.								
190	2124	GENERAL PURP. COMPUTERS								
200	2211	ANALOG ELEC. SWITCH								
210	2212	DIGITAL ELEC. SWITCH								
220	2215	ELECTRO MECHANICAL								
230	2220	OPERATOR SYSTEMS								
240	2231	RADIO SYSTEMS								
250	2232	CIRCUIT EQPT.								
260		ANALOG CIRCUIT EQPT.								
270		DIGITAL CIRCUIT EQPT.								
280		DIGITAL DATA SYSTEMS								
290	2351	PUBLIC TEL TERM EQPT								
300	2362	OTHER TERMINAL EQPT.								
310		TEL. & MISC.								
320		PBX - DDS								
330		PBX - OTHER								
340	2411	POLES								
350	2421	AERIAL CABLE								
360		AC - SUBSCRIBER								
370		AC - TRUNK								
380	2422	UNDERGROUND CABLE								
390		UG - SUBSCRIBER								
400		UG - TRUNK								
410	2423	BURIED CABLE								
420	2424	SUBMARINE CABLE								
430	2426	INTRABUILD. NETWORK CABLE								
440	2441	CONDUIT SYSTEMS								
450										
460										
470										
480										
490										
500		SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS								
510		SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A		N/A	

--------- N O T E ----------
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE
POPULATED WITH APPROPRIATE
COMPANY SPECIFIC INFORMATION

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS
($000 OMITTED)

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	PLT IN SVC A/O 1/1/89	PLT IN SVC A/O 1/1/90	PLT IN SVC A/O 7/1/90	PLT IN SVC A/O 7/1/91	7/1/90 TO 6/30/91 TEST PERIOD ESTIMATED AVERAGE PLANT BALANCES	7/1/90 - 6/30/91 TEST PERIOD ESTIMATED EFFECT DUE TO DEPR EXP	AMORT $	TOTAL
	OTHER ACCOUNTS	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)=R+S
520	2111 LAND						N/A	N/A	N/A
530	2321 STN CON. IW AMORT.						N/A		
540	MISC E.G., OTH AMORT. ACCTS						N/A		
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS								
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	ADJUSTMENTS TO TOTAL COMPANY:								
580	PART 64								
590	BOC ADJUSTMENTS (E.G., SNFA, TP)								
600	ICO ADJUSTMENTS (E.G., CPE)								
610	TOTAL CO. SUBJECT TO SEPARATIONS								
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

FILING ENTITY: ANY COMPANY

DMD-1
Page 1 of 7

COMMON LINE NORMALIZED DEMAND - MOU

(MINUTES IN THOUSANDS)

	HISTORICAL PERIOD DERIVED	PREMIUM CCL MOU			NON-PREMIUM CCL MOU			TOTAL CCL MOU			TOTAL CHARGEABLE CCL MOU	
		ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.
		(A)	(B)	(C) = A+B	(D)	(E)	(F) = D+E	(G) = A+D	(H) = B+E	(I) = C+F	(J) = A+(D*.45)	(K) = B+(E*.45)
100	OCT '86											
105	NOV '86											
110	DEC '86											
115	JAN '87											
120	FEB '87											
125	MAR '87											
130	APR '87											
135	MAY '87											
140	JUN '87											
145	JUL '87											
150	AUG '87											
155	SEP '87											
160	OCT '87											
165	NOV '87											
170	DEC '87											
175	JAN '88											
180	FEB '88											
185	MAR '88											
190	APR '88											
195	MAY '88											
200	JUN '88											
205	JUL '88											
210	AUG '88											
215	SEP '88											
220	OCT '88											
225	NOV '88											
230	DEC '88											
235	JAN '89											
240	FEB '89											
245	MAR '89											
250	APR '89											
255	MAY '89											
260	JUN '89											
265	JUL '89											
270	AUG '89											
275	SEP '89											
280	OCT '89											
285	NOV '89											
290	DEC '89											
	PROSPECTIVE PERIOD											
295	TEST PERIOD											

FILING ENTITY: ANY COMPANY

DMD-1
Page 2 of 7

COMMON LINE NORMALIZED DEMAND - MOU

(MINUTES IN THOUSANDS)

	PREMIUM CCL MOU			NON-PREMIUM CCL MOU			TOTAL CCL MOU			TOTAL CHARGEABLE CCL MOU	
	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.
	(A)	(B)	(C) = A+B	(D)	(E)	(F) = D+E	(G) = A+D	(H) = B+E	(I) = C+F	(J) = A+(D*.45)	(K) = B+(E*.45)
AT&T ANALYSIS											
300 3Q87											
305 4Q87											
310 1Q88											
315 2Q88											
320 3Q88											
325 4Q88											
330 1Q89											
335 2Q89											
340 3Q89											
345 4Q89											
LEC ANALYSIS											
400 3Q87											
405 4Q87											
410 1Q88											
415 2Q88											
420 3Q88											
425 4Q88											
430 1Q89											
435 2Q89											
440 3Q89											
445 4Q89											

FILING ENTITY: ANY COMPANY

DMD-1
Page 3 of 7

COMMON LINE NORMALIZED DEMAND - MOU

(MINUTES IN THOUSANDS)

TOTAL USERS ANALYSIS		PREMIUM CCL MOU			NON-PREMIUM CCL MOU			TOTAL CCL MOU			TOTAL CHARGEABLE CCL MOU	
		ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.
		(A)	(B)	(C) = A+B	(D)	(E)	(F) = D+E	(G) = A+D	(H) = B+E	(I) = C+F	(J) = A+(D*.45)	(K) = B+(E*.45)
450	3Q87											
455	4Q87											
460	1Q88											
465	2Q88											
470	3Q88											
475	4Q88											
480	1Q89											
485	2Q89											
490	3Q89											
495	4Q89											

FILING ENTITY: ANY COMPANY

SWITCHED TRAFFIC SENSITIVE NORMALIZED DEMAND - MOU
(MINUTES IN THOUSANDS)

HISTORICAL	PREMIUM TRAFFIC SENSITIVE MOU	NON-PREMIUM TRAFFIC SENSITIVE MOU	TOTAL TRAFFIC SENSITIVE MOU	TOTAL CHARGEABLE TRAFFIC SENSITIVE MOU
AT&T ANALYSIS	(A)	(B)	(C) = A+B	(D) = A+(.45*B)
500 3Q87				
505 4Q87				
510 1Q88				
515 2Q88				
520 3Q88				
525 4Q88				
530 1Q89				
535 2Q89				
540 3Q89				
545 4Q89				
LEC ANALYSIS				
550 1Q87				
555 2Q87				
560 3Q87				
565 4Q87				
570 1Q88				
575 2Q88				
580 3Q88				
585 4Q88				
590 1Q89				
595 2Q89				
600 3Q89				
605 4Q89				

FILING ENTITY: ANY COMPANY

SWITCHED TRAFFIC SENSITIVE NORMALIZED DEMAND - MOU
(MINUTES IN THOUSANDS)

HISTORICAL	PREMIUM TRAFFIC SENSITIVE MOU (A)	NON-PREMIUM TRAFFIC SENSITIVE MOU (B)	TOTAL TRAFFIC SENSITIVE MOU (C) = A+B	TOTAL CHARGEABLE TRAFFIC SENSITIVE MOU (D) = A+(.45*B)
TOTAL USERS ANALYSIS				
610 1Q87				
615 2Q87				
620 3Q87				
625 4Q87				
630 1Q88				
635 2Q88				
640 3Q88				
645 4Q88				
650 1Q89				
655 2Q89				
660 3Q89				
665 4Q89				
PROSPECTIVE PERIOD				
670 TEST PERIOD				

FILING ENTITY: ANY COMPANY

PROSPECTIVE
CARRIER COMMON LINE DEMAND - MOU

(MINUTES IN THOUSANDS)

	PREMIUM CCL MOU			NON-PREMIUM CCL MOU			TOTAL CCL MOU			TOTAL CHARGEABLE CCL MOU	
	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.	TOTAL	ORIG.	TERM.
	(A)	(B)	(C) = A+B	(D)	(E)	(F) = D+E	(G) = A+D	(H) = B+E	(I) = C+F	(J) = A+(D*.45)	(K) = B+(E*.45)
700 BASELINE DEMAND (NOTE 1)											
705 OUT OF TREND BYPASS											
710 DEMAND RESPONSE (NOTE 2)											
715 RATE MAKING DEMAND TOTAL (NOTE 3)											

1510

NOTES:

(1) - BASELINE DEMAND WILL INCLUDE TRENDED BYPASS

(2) - THE RESULT OF ANTICIPATED RATE CHANGES.

(3) - RATEMAKING DEMAND TOTAL SHOULD AGREE WITH DMD-1, PAGE 1, ROW 295.

FILING ENTITY: ANY COMPANY

PROSPECTIVE
SWITCHED TRAFFIC SENSITIVE DEMAND - MOU
(MINUTES IN THOUSANDS)

	PREMIUM TRAFFIC SENSITIVE MOU	NON-PREMIUM TRAFFIC SENSITIVE MOU	TOTAL TRAFFIC SENSITIVE MOU	TOTAL CHARGEABLE TRAFFIC SENSITIVE MOU
	(A)	(B)	(C) = A+B	(D) = A+(.45*B)
720 BASELINE DEMAND (NOTE 1)				
725 OUT OF TREND BYPASS				
730 DEMAND RESPONSE (NOTE 2)				
735 RATE MAKING DEMAND TOTAL (NOTE 3)				

1511

NOTES:

(1) - BASELINE DEMAND WILL INCLUDE TRENDED BYPASS

(2) - THE RESULT OF ANTICIPATED RATE CHANGES.

(3) - RATEMAKING DEMAND TOTAL SHOULD AGREE WITH DMD-1, PAGE 5, ROW 670.

FILING ENTITY: ANY COMPANY

DMD - 2
Page 1 of 1

SWITCHED ACCESS DEMAND - LINES

	PERIOD	TOTAL SUBCRIBER LINES EXCL. WATS (A)	PERCENT CUMULATIVE LINES CONVERTED TO EQUAL ACCESS EXCL. WATS (B)	PERCENT BUSINESS SUBSCRIBER LINES EXCL. WATS (C)
100	1Q88			
110	2Q88			
120	3Q88			
130	4Q88			
140	1Q89			
150	2Q89			
160	3Q89			
170	4Q89			
180	1/89 - 12/89 HISTORICAL			
190	1Q90			
200	2Q90			
210	7/90 - 6/91 PROSPECTIVE			
220	3Q90			
230	4Q90			
240	1Q91			
250	2Q91			

NOTE:
Line counts should be end of period for Rows 100 thru 170, 190, 200 and 220 thru 250.
Line counts for Rows 180 and 210 are averages for the periods.

FILING ENTITY: ANY COMPANY

DMD - 3
Page 1 of 1

MINUTES OF USE DEMAND COMPARISON

(MINUTES IN THOUSANDS)

		COMMON LINE MOU (A)	TRAFFIC SENSITIVE MOU (B)
100	Prospective 7/90 - 6/91		
110	Historical 1/89 - 12/89 (1)		
120	Annualized Historical 4/89 - 12/89 (1)		
130	Annualized Prospective 4/89 - 12/89 (2)		
140	Historical 1988 (1)		
150	Prospective 1988 (3)		

NOTES:
(1) Actual Operating Statistics
(2) From 1989 TRP DMD-3
(3) From 1988 TRP DMD-3

FILING ENTITY: ANY COMPANY

SPECIAL ACCESS
CIRCUIT DEMAND

	HISTORICAL PERIOD	METALLIC (A)	TELEGRAPH (B)	AUDIO PART TIME (C)	VOICE GRADE (EXCLU WATS) (D)	WATS (E)	VIDEO PART TIME (F)
100	Jan. '87						
105	Feb. '87						
110	Mar. '87						
115	Apr. '87						
120	May '87						
125	Jun. '87						
130	Jul. '87						
135	Aug. '87						
140	Sep. '87						
145	Oct. '87						
150	Nov. '87						
155	Dec. '87						
160	Jan. '88						
165	Feb. '88						
170	Mar. '88						
175	Apr. '88						
180	May. '88						
185	Jun. '88						
190	Jul. '88						
195	Aug. '88						
200	Sep. '88						
205	Oct. '88						
210	Nov. '88						
215	Dec. '88						
220	Jan. '89						
225	Feb. '89						
230	Mar. '89						
235	Apr. '89						
240	May. '89						
245	Jun. '89						
250	Jul. '89						
255	Aug. '89						
260	Sep. '89						
265	Oct. '89						
270	Nov. '89						
275	Dec. '89						
280	AVERAGE FOR PROSPECTIVE PERIOD 7/90 - 6/91						

FILING ENTITY: ANY COMPANY

SPECIAL ACCESS CIRCUIT DEMAND

	HISTORICAL PERIOD	AUDIO PROGRAM (G)	VIDEO (H)	DS1 (I)	DIG DATA SERVICE (J)	WIDEBAND (K)	DS3 (L)
100	Jan. '87						
105	Feb. '87						
110	Mar. '87						
115	Apr. '87						
120	May '87						
125	Jun. '87						
130	Jul. '87						
135	Aug. '87						
140	Sep. '87						
145	Oct. '87						
150	Nov. '87						
155	Dec. '87						
160	Jan. '88						
165	Feb. '88						
170	Mar. '88						
175	Apr. '88						
180	May. '88						
185	Jun. '88						
190	Jul. '88						
195	Aug. '88						
200	Sep. '88						
205	Oct. '88						
210	Nov. '88						
215	Dec. '88						
220	Jan. '89						
225	Feb. '89						
230	Mar. '89						
235	Apr. '89						
240	May. '89						
245	Jun. '89						
250	Jul. '89						
255	Aug. '89						
260	Sep. '89						
265	Oct. '89						
270	Nov. '89						
275	Dec. '89						
280	AVERAGE FOR PROSPECTIVE PERIOD 7/90 - 6/91						

FILING ENTITY: ANY COMPANY

DMD-4
Page 3 of 9

SPECIAL ACCESS
CHANNEL TERMINATION DEMAND

	HISTORICAL PERIOD	METALLIC	TELEGRAPH 2 WIRE	TELEGRAPH 4 WIRE	AUDIO PART TIME	VOICE GRADE (EXCL WATS) 2 WIRE	VOICE GRADE (EXCL WATS) 4 WIRE	WATS 2 WIRE	WATS 4 WIRE	VIDEO PART TIME
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
285	Jan. '87									
290	Feb. '87									
295	Mar. '87									
300	Apr. '87									
305	May '87									
310	Jun. '87									
315	Jul. '87									
320	Aug. '87									
325	Sep. '87									
330	Oct. '87									
335	Nov. '87									
340	Dec. '87									
345	Jan. '88									
350	Feb. '88									
355	Mar. '88									
360	Apr. '88									
365	May. '88									
370	Jun. '88									
375	Jul. '88									
380	Aug. '88									
385	Sep. '88									
390	Oct. '88									
395	Nov. '88									
400	Dec. '88									
405	Jan. '89									
410	Feb. '89									
415	Mar. '89									
420	Apr. '89									
425	May. '89									
430	Jun. '89									
435	Jul. '89									
440	Aug. '89									
445	Sep. '89									
450	Oct. '89									
455	Nov. '89									
460	Dec. '89									
465	AVERAGE FOR PROSPECTIVE PERIOD 7/90 - 6/91									

FILING ENTITY: ANY COMPANY

SPECIAL ACCESS
CHANNEL TERMINATION DEMAND

	HISTORICAL PERIOD	AUDIO PROGRAM (J)	VIDEO (K)	DS1 (L)	DIG DATA SERVICE (M)	WIDEBAND (N)	DS3 (O)
285	Jan. '87						
290	Feb. '87						
295	Mar. '87						
300	Apr. '87						
305	May '87						
310	Jun. '87						
315	Jul. '87						
320	Aug. '87						
325	Sep. '87						
330	Oct. '87						
335	Nov. '87						
340	Dec. '87						
345	Jan. '88						
350	Feb. '88						
355	Mar. '88						
360	Apr. '88						
365	May. '88						
370	Jun. '88						
375	Jul. '88						
380	Aug. '88						
385	Sep. '88						
390	Oct. '88						
395	Nov. '88						
400	Dec. '88						
405	Jan. '89						
410	Feb. '89						
415	Mar. '89						
420	Apr. '89						
425	May. '89						
430	Jun. '89						
435	Jul. '89						
440	Aug. '89						
445	Sep. '89						
450	Oct. '89						
455	Nov. '89						
460	Dec. '89						
465	AVERAGE FOR PROSPECTIVE PERIOD 7/90 - 6/91						

FILING ENTITY: ANY COMPANY

SPECIAL ACCESS
INTEROFFICE MILEAGE DEMAND

	HISTORICAL PERIOD	METALLIC (A)	TELEGRAPH (B)	AUDIO PART TIME (C)	VOICE GRADE (EXCLU WATS) (D)	WATS (E)	VIDEO PART TIME (F)
470	Jan. '87						
475	Feb. '87						
480	Mar. '87						
485	Apr. '87						
490	May '87						
495	Jun. '87						
500	Jul. '87						
505	Aug. '87						
510	Sep. '87						
515	Oct. '87						
520	Nov. '87						
525	Dec. '87						
530	Jan. '88						
535	Feb. '88						
540	Mar. '88						
545	Apr. '88						
550	May. '88						
555	Jun. '88						
560	Jul. '88						
565	Aug. '88						
570	Sep. '88						
575	Oct. '88						
580	Nov. '88						
585	Dec. '88						
590	Jan. '89						
595	Feb. '89						
600	Mar. '89						
605	Apr. '89						
610	May. '89						
615	Jun. '89						
620	Jul. '89						
625	Aug. '89						
630	Sep. '89						
635	Oct. '89						
640	Nov. '89						
645	Dec. '89						
650	AVERAGE FOR PROSPECTIVE PERIOD 7/90 - 6/91						

FILING ENTITY: ANY COMPANY

		SPECIAL ACCESS INTEROFFICE MILEAGE DEMAND					
		AUDIO PROGRAM	VIDEO	DS1	DIG DATA SERVICE	WIDEBAND	DS3
	HISTORICAL PERIOD	(G)	(H)	(I)	(J)	(K)	(L)
470	Jan. '87						
475	Feb. '87						
480	Mar. '87						
485	Apr. '87						
490	May '87						
495	Jun. '87						
500	Jul. '87						
505	Aug. '87						
510	Sep. '87						
515	Oct. '87						
520	Nov. '87						
525	Dec. '87						
530	Jan. '88						
535	Feb. '88						
540	Mar. '88						
545	Apr. '88						
550	May. '88						
555	Jun. '88						
560	Jul. '88						
565	Aug. '88						
570	Sep. '88						
575	Oct. '88						
580	Nov. '88						
585	Dec. '88						
590	Jan. '89						
595	Feb. '89						
600	Mar. '89						
605	Apr. '89						
610	May. '89						
615	Jun. '89						
620	Jul. '89						
625	Aug. '89						
630	Sep. '89						
635	Oct. '89						
640	Nov. '89						
645	Dec. '89						
	AVERAGE FOR PROSPECTIVE PERIOD						
650	7/90 - 6/91						

FILING ENTITY

SPECIAL ACCESS
CHANNEL MILEAGE DEMAND COMPARISON
BY RATE BAND

		1/89 - 12/89 HISTORICAL (A)				7/90 - 6/91 PROSPECTIVE (B)			
		MILEAGE BAND		DEMAND		MILEAGE BAND		DEMAND	
		LOW	HIGH	CKTS	IOM	LOW	HIGH	CKTS	IOM
			METALLIC						
701									
702									
703									
704									
705									
706									
707									
708									
709									
710	TOTAL -->	N/A	N/A			N/A	N/A		
			TELEGRAPH						
711									
712									
713									
714									
715									
716									
717									
718									
719									
720	TOTAL -->	N/A	N/A			N/A	N/A		
			AUDIO PART TIME						
721									
722									
723									
724									
725									
726									
727									
728									
729									
730	TOTAL -->	N/A	N/A			N/A	N/A		
			VOICE GRADE (EXCL WATS)						
731									
732									
733									
734									
735									
736									
737									
738									
739									
740	TOTAL -->	N/A	N/A			N/A	N/A		

FILING ENTITY

SPECIAL ACCESS
CHANNEL MILEAGE DEMAND COMPARISON
BY RATE BAND

		1/89 - 12/89 HISTORICAL (A)				7/90 - 6/91 PROSPECTIVE (B)			
		MILEAGE BAND		DEMAND		MILEAGE BAND		DEMAND	
		LOW	HIGH	CKTS	IOM	LOW	HIGH	CKTS	IOM
			WATS						
741									
742									
743									
744									
745									
746									
747									
748									
749									
750	TOTAL -->	N/A	N/A			N/A	N/A		
			VIDEO PART TIME						
751									
752									
753									
754									
755									
756									
757									
758									
759									
760	TOTAL -->	N/A	N/A			N/A	N/A		
			AUDIO PROGRAM						
761									
762									
763									
764									
765									
766									
767									
768									
769									
770	TOTAL -->	N/A	N/A			N/A	N/A		
			VIDEO						
771									
772									
773									
774									
775									
776									
777									
778									
779									
780	TOTAL -->	N/A	N/A			N/A	N/A		

FILING ENTITY

DMD-4
Page 9 of 9

SPECIAL ACCESS
CHANNEL MILEAGE DEMAND COMPARISON
BY RATE BAND

		1/89 - 12/89 HISTORICAL				7/90 - 6/91 PROSPECTIVE			
		MILEAGE BAND (A)		DEMAND		MILEAGE BAND (B)		DEMAND	
		LOW	HIGH	CKTS	IOM	LOW	HIGH	CKTS	IOM
			DS1						
781									
782									
783									
784									
785									
786									
787									
788									
789									
790	TOTAL -->	N/A	N/A			N/A	N/A		
			DIGITAL DATA SERVICE						
791									
792									
793									
794									
795									
796									
797									
798									
799									
800	TOTAL -->	N/A	N/A			N/A	N/A		
			WIDEBAND						
801									
802									
803									
804									
805									
806									
807									
808									
809									
810	TOTAL -->	N/A	N/A			N/A	N/A		
			DS3						
811									
812									
813									
814									
815									
816									
817									
818									
819									
820	TOTAL -->	N/A	N/A			N/A	N/A		

FILING ENTITY: ANY COMPANY

COMMON LINE DEMAND (MINUTES IN THOUSANDS)

	PERIOD	CARRIER COMMON LINE			SINGLE-LINE BUSINESS C.P.T.	RESIDENCE C.P.T.		MULTILINE BUSINESS (NOTE 1)	CENTRX CO AND CTX LIKE LINES (NOTE 2)	SPECIAL ACCESS LINES SUBJECT TO SURCHARGE
		ORIG.	TERM.	TOTAL		LIFELINE	NON-LIFELINE			
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
100	1Q87									
110	2Q87									
120	3Q87									
130	4Q87									
140	1Q88									
150	2Q88									
160	3Q88									
170	4Q88									
180	1Q89									
190	2Q89									
200	3Q89									
210	4Q89									
220	7/90 - 6/91 PROSPECTIVE									

NOTES:
(1) - Multi line business excluding WATS, includes CTX-CO with in service dates post 7/83.
(2) - Centrex CO and CTX like lines reflect revenues for lines in service pre 7/83.

FILING ENTITY: ANY COMPANY

COMMON LINE REVENUES (DOLLARS IN THOUSANDS)

	PERIOD	CARRIER COMMON LINE			SINGLE-LINE BUSINESS C.P.T.	RESIDENCE C.P.T.		MULTILINE BUSINESS (NOTE 1)	CENTRX CO AND CTX LIKE LINES (NOTE 2)	SPECIAL ACCESS LINES SUBJECT TO SURCHARGE
		ORIG.	TERM.	TOTAL		LIFELINE	NON-LIFELINE			
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
300	1Q87									
310	2Q87									
320	3Q87									
330	4Q87									
340	1Q88									
350	2Q88									
360	3Q88									
370	4Q88									
380	1Q89									
390	2Q89									
400	3Q89									
410	4Q89									
420	7/90 - 6/91 PROSPECTIVE									

NOTES:
(1) - Multi line business excluding WATS, includes CTX-CO with in service dates post 7/83.
(2) - Centrex CO and CTX like lines reflect revenues for lines in service pre 7/83.

FILING ENTITY: ANY COMPANY

RTE - 1
Page 1 of 1

END USER AND SWITCHED ACCESS RATE ANALYSIS

		12/31/89 RATE	1/1/90 RATE	CURRENTLY EFFECTIVE RATE	PROPOSED 7/1/90 RATE	PROPOSED TO 1/1/90 % CHANGE	PROPOSED TO CURRENT % CHANGE
		(A)	(B) (NOTE 1)	(C) (NOTE 2)	(D)	(E)=((D-B)/B)*100	(F)=((D-C)/C)*100
	A. SWITCHED ACCESS RATES						
110	Premium CCL Terminating Rate, Cents Per Minute						
120	Non-Premium Terminating CCL Rate, Cents Per Minute						
130	Premium Switching Rate, (Average) Cents Per Minute						
140	Non-Premium Switching Rate, (Average) Cents Per Minute						
150	Premium Local Transport Rate, (Average) Cents Per Minute						
160	Non-Premium Local Transport Rate, (Average) Cents Per Minute						
170	Equal Access Per _____						
180	Non-Recurring Charge Per _____						
	B. END USER CHARGES						
190	Multiline Business						
200	Residence and Single-Line Bus.						
	C. DIRECTORY ASSISTANCE						
210	Operator, Cents Per Call (Information Rate)						
220	Transport, Cents Per Call (Avg. Transport Rate)						
230	Total, Cents Per Call						
240	Flat Rate						

NOTE 1: EFFECTIVE RATES RESULTING FROM THE DECEMBER 1989 ORDERS.

NOTE 2: IF CURRENT RATES IN COL C DIFFER FROM COL B, EXCHANGE CARRIERS SHOULD INDICATE IN A FOOTNOTE THE EFFECTIVE DATE OF THE COL C RATE.

FILING ENTITY: ANY COMPANY

SPECIAL ACCESS RATE ANALYSIS

	SPECIAL ACCESS	12/31/89 RATE	1/1/90 RATE	CURRENTLY EFFECTIVE RATE	PROPOSED 7/1/90 RATE	PROPOSED TO 1/1/90 % CHANGE	PROPOSED TO CURRENT % CHANGE
		(A)	(B) (NOTE 1)	(C) (NOTE 2)	(D)	(E)=((D-B)/B)*100	(F)=((D-C)/C)*100
100	2W VG. 0 Mile Trans.						
110	2W VG. 10 Mile Trans.						
120	4W VG. 0 Mile Trans.						
130	4W VG. 10 Mile Trans.						
140	DA1 0 Mile Trans.						
150	DA1 10 Mile Trans.						
160	DA2 0 Mile Trans.						
170	DA2 10 Mile Trans.						
180	DA3 0 Mile Trans.						
190	DA3 10 Mile Trans.						
200	DA4 0 Mile Trans.						
210	DA4 10 Mile Trans.						
220	Hicap 0 Mile Trans.						
230	Hicap 10 Mile Trans.						
240	DS3 0 Mile Trans.						
250	DS3 10 Mile Trans.						

NOTE 1: EFFECTIVE RATES RESULTING FROM THE DECEMBER 1989 ORDERS.

NOTE 2: IF CURRENT RATES IN COL C DIFFER FROM COL B, EXCHANGE CARRIERS SHOULD INDICATE IN A FOOTNOTE THE EFFECTIVE DATE OF THE COL C RATE.

FILING ENTITY: ANY COMPANY

ANNUALIZED ACCESS PRICEOUT COMPARISONS

		Revenue at 12/31/89 Rate	Revenue at 1/1/90 Rate	Change (B)-(A)	Revenue at Currently Effective Rate	Change (D)-(B)	Revenue at Proposed Rate 7/1/90	Change (F)-(D)
		(A)	(B)	(C)=B-A	(D)	(E)	(F)	(G)=F-D
100	Multi-Line Business							
110	Residence and Single-Line Business							
120	CCL							
130	Switching							
140	Local Transport							
150	Information							
160	Equal Access							
170	Special Access							

NOTES:
(1) Projected demand quantities for the test period, 7/90 thru 6/91, should be uniformly applied to different rate schedules to obtain price-outs.

(2) All non-recurring charges should be included. EA should also be included.

FILING ENTITY: ANY COMPANY

RTE - 4
Page 1 of 2

	COSAS FOR WHICH RATES ARE AVERAGED		
	MULTILINE BUSINESS	RESIDENCE AND SINGLE-LINE BUS.	CCL
	(A)	(B)	(C)
100			
101			
102			
103			
104			
105			
106			
107			
108			
109			
110			
112			
113			
114			
115			
116			
117			
118			
119			
120			
121			
122			
123			
124			
125			
126			
127			
128			
129			
130			

NOTE: Companies should list in the appropriate column all COSAs for which rates in that column are averaged or pooled.

FILING ENTITY: ANY COMPANY

	COSAS FOR WHICH RATES ARE AVERAGED				
	SWITCHING	LOCAL TRANSPORT	INFORMATION	EQUAL ACCESS	SPECIAL ACCESS
	(D)	(E)	(F)	(G)	(H)
100					
101					
102					
103					
104					
105					
106					
107					
108					
109					
110					
112					
113					
114					
115					
116					
117					
118					
119					
120					
121					
122					
123					
124					
125					
126					
127					
128					
129					
130					

NOTE: Companies should list in the appropriate column all COSAs for which rates in that column are averaged or pooled.

FILING ENTITY: ANY COMPANY

ERN - 1
Page 1 of 1

RATE OF RETURN COMPARISON

		1/89 - 12/89 (A)	4/89 - 12/89 (B)	7/90 - 6/91 PROSPECTIVE (C)
100	Common Line			
110	Traffic Sensitive Switched			
120	Switching			
130	Local Transport			
140	Information			
150	Equal Access			
160	Traffic Sensitive - Special			
170	Traffic Sensitive - Total			
180	Total Rate of Return Regulated IS Access			

NOTES:

GENERAL - Companies should list all proposed rate affecting tariff revisions for the historic periods and provide Transmittal number, filing date, requested changes, action taken, and effective date, if applicable, in a footnote.

FILING ENTITY: ANY COMPANY

ERN - 1
Page 1 of 1

RATE OF RETURN COMPARISON

		1/89 - 12/89 (A)	4/89 - 12/89 (B)	7/90 - 6/91 PROSPECTIVE (C)
100	Common Line			
110	Traffic Sensitive Switched			
120	Switching			
130	Local Transport			
140	Information			
150	Equal Access			
160	Traffic Sensitive - Special			
170	Traffic Sensitive - Total			
180	Total Rate of Return Regulated IS Access			

NOTES:

GENERAL - Companies should list all proposed rate affecting tariff revisions for the historic periods and provide transmittal number, filing date, requested changes, action taken, and effective date, if applicable, in a footnote.

FILING ENTITY: ANY COMPANY

REV - 1
Page 1 of 3

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SWITCHED ACCESS
(MINUTES AND REVENUES IN THOUSANDS)

		MILEAGE BAND		RATES PER			RATE MAKING DEMAND PER			ANTICIPATED REVENUE	REVENUE REQUIREMENT
		LOW	HIGH	MIN/MSG	MIN MILE	LINE OR TRK	MIN/MSG	MIN MILE	LINE OR TRK		
	COMMON LINE	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)(NOTE 1)	(J)
100	Multiline Business EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
110	Single Line Bus. EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
120	Centrex EUCL (Pre 7/83)	N/A	N/A	N/A	N/A		N/A	N/A			N/A
130	Residence EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
140	Sp. Access Line Surchrge	N/A	N/A	N/A	N/A		N/A	N/A			N/A
150	Terminating CCL Premium	N/A	N/A		N/A	N/A		N/A	N/A		N/A
160	Terminating CCL NonPrem	N/A	N/A		N/A	N/A		N/A	N/A		N/A
170	Originating CCL Premium	N/A	N/A		N/A	N/A		N/A	N/A		N/A
180	Originating CCL NonPrem	N/A	N/A		N/A	N/A		N/A	N/A		N/A
190	Common Line - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	INFORMATION										
200	Information - Per Msg.	N/A	N/A		N/A	N/A		N/A	N/A		N/A
210	Information - Per Min.	N/A	N/A		N/A	N/A		N/A	N/A		N/A
220	Information - Surcharge	N/A	N/A		N/A			N/A	N/A		N/A
230	Information - Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
240	Information - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	SWITCHING										
250	Premium Switching	N/A	N/A		N/A	N/A		N/A	N/A		N/A
260	Non-Prem Switching	N/A	N/A		N/A	N/A		N/A	N/A		N/A
270	Other Switching	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
280	Switching - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

NOTES:
1 - Col. I = C*F or D*G or E*N except Rows 190, 270, 280, 340 and 350 where:
Row 190 Col. I = Sum (Rows 100 thru 180)
Row 240 Col. I = Sum (Rows 200 thru 230)
Row 270 Col. I = Input Value
Row 280 Col. I = Sum (Rows 250 thru 270)
Row 340 Col. I = Input Value
Row 350 Col. I = Sum (Rows 290 thru 340)

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SWITCHED ACCESS
(MINUTES AND REVENUES IN THOUSANDS)

		MILEAGE BAND		RATES PER			RATE MAKING DEMAND PER			ANTICIPATED REVENUE	REVENUE REQUIREMENT
		LOW	HIGH	MIN/MSG	MIN MILE	LINE OR TRK	MIN/MSG	MIN MILE	LINE OR TRK		
	PREMIUM LOCAL TRANSPORT	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)(NOTE 1)	(J)
290	Local Trans. - MB1				N/A	N/A		N/A	N/A		N/A
291	Local Trans. - MB2				N/A	N/A		N/A	N/A		N/A
292	Local Trans. - MB3				N/A	N/A		N/A	N/A		N/A
293	Local Trans. - MB4				N/A	N/A		N/A	N/A		N/A
294	Local Trans. - MB5				N/A	N/A		N/A	N/A		N/A
295	Local Trans. - MB6				N/A	N/A		N/A	N/A		N/A
296	Local Trans. - MB7				N/A	N/A		N/A	N/A		N/A
297	Local Trans. - MB8				N/A	N/A		N/A	N/A		N/A
298	Local Trans. - MB9				N/A	N/A		N/A	N/A		N/A
299	Local Trans. - MB10				N/A	N/A		N/A	N/A		N/A
300	MMUC Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
301	Termination	N/A	N/A		N/A	N/A		N/A	N/A		N/A
302	Facility	N/A	N/A	N/A		N/A	N/A		N/A		N/A
	NON-PREMIUM LOCAL TRANSPORT										
310	Local Trans. - MB1				N/A	N/A		N/A	N/A		N/A
311	Local Trans. - MB2				N/A	N/A		N/A	N/A		N/A
312	Local Trans. - MB3				N/A	N/A		N/A	N/A		N/A
313	Local Trans. - MB4				N/A	N/A		N/A	N/A		N/A
314	Local Trans. - MB5				N/A	N/A		N/A	N/A		N/A
315	Local Trans. - MB6				N/A	N/A		N/A	N/A		N/A
316	Local Trans. - MB7				N/A	N/A		N/A	N/A		N/A
317	Local Trans. - MB8				N/A	N/A		N/A	N/A		N/A
318	Local Trans. - MB9				N/A	N/A		N/A	N/A		N/A
319	Local Trans. - MB10				N/A	N/A		N/A	N/A		N/A
320	MMUC Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
321	Termination	N/A	N/A		N/A	N/A		N/A	N/A		N/A
322	Facility	N/A	N/A	N/A		N/A	N/A		N/A		N/A
330	Transport Installation Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
340	Other Transport	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A
350	Local Trans. - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		

NOTES:
1 - Col. I = C*F or D*G or E*N except Rows 190, 270, 280, 340 and 350 where:
Row 190 Col. I = Sum (Rows 100 thru 180)
Row 240 Col. I = Sum (Rows 200 thru 230)
Row 270 Col. I = Input Value
Row 280 Col. I = Sum (Rows 250 thru 270)
Row 340 Col. I = Input Value
Row 350 Col. I = Sum (Rows 290 thru 340)

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SPECIAL ACCESS
(MINUTES AND REVENUES IN THOUSANDS)

		MILEAGE BAND		RATES		RATE MAKING DEMAND		ANTICIPATED REVENUE
		LOW	HIGH	FIXED	PER UNIT	FIXED Q	VAR UNITS	
	VOICE GRADE	(A)	(B)	(C)	(D)	(E)	(F)	(G)=(C*E)+(D*F)
360	Chan Term - 2 Wire	N/A	N/A	N/A		N/A		
370	Chan Term - 4 Wire	N/A	N/A	N/A		N/A		
	INTER-OFFICE MILEAGE							
380	Voice Grade - MB1							
381	Voice Grade - MB2							
382	Voice Grade - MB3							
383	Voice Grade - MB4							
384	Voice Grade - MB5							
385	Voice Grade - MB6							
386	Voice Grade - MB7							
387	Voice Grade - MB8							
388	Voice Grade - MB9							
389	Voice Grade - MB10							
390	Voice Grade - Total	N/A	N/A	N/A	N/A	N/A	N/A	
400	Non-Recurring	N/A	N/A	N/A	N/A	N/A	N/A	
	HIGH CAPACITY							
410	Channel Termination	N/A	N/A	N/A		N/A		
	INTER-OFFICE MILEAGE							
420	High Capacity - MB1							
421	High Capacity - MB2							
422	High Capacity - MB3							
423	High Capacity - MB4							
424	High Capacity - MB5							
425	High Capacity - MB6							
426	High Capacity - MB7							
427	High Capacity - MB8							
428	High Capacity - MB9							
429	High Capacity - MB10							
430	High Capacity - Total	N/A	N/A	N/A	N/A	N/A		
440	Non-Recurring	N/A	N/A	N/A	N/A	N/A		

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE
(REVENUES IN THOUSANDS)

Classifications	Common Line	Traffic Sensitive					Special Access	Total Access
		Switching	Equal Access	Transport	Information	Total		
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H) = F + G
Revenues								
100 Network Access								
110 Nonrecurring Charges excl ICBs								
120 Recurring Charges excl ICBs								
130 Individual Case Basis Rates								

FILING ENTITY: ANY COMPANY

SEP - 1
Page 1 of 1

REVENUE REQUIREMENT EFFECT OF BASIC STUDIES EFFECTIVE ON 7/1/90

	BASIC STUDIES	BFP (A)	PAYPHONE (B)	INSIDE WIRE (C)	TS-SWITCHING (D)	TS-LOCAL TRANSPORT (E)	TS-EQUAL ACCESS (F)	TS-INFORMATION (G)	SPECIAL ACCESS (H)
100									
110									
120									
130									
140									
150									
160									
170									
180									
190									
200									
210									
220									
230									
240	Total								

NOTE: Because of possible interaction effects, row 240 will not necessarily be the sum of all rows.

Attachment C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)
	)
Commission Requirements	)
for Cost Support Material	)
To Be Filed with 1990 Annual	)
Access Tariffs	)

ORDER

Approved by OMB
3060-0400
Expires 07/31/90
See below for information regarding public
burden estimate

NOTICE: The Tariff Review Plan (TRP) contains requirements for summary cost support material that certain local exchange carriers (LECs) must file to support their annual access charge tariff filings in partial fulfillment of Section 61.38 of the Commission's Rules. The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. The information in the TRP is used by the FCC to determine whether the services offered are just and reasonable as required by the Communications Act of 1934, as amended. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Filing Entity:

T2COS-1(P)
Page 1 of 4

TIER 2
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/90 THRU 6/91	TOTAL COMPANY	ADJUSTMENTS PART 64	ADJUSTMENTS OTHER	TOTAL COMPANY SUBJECT TO SEPARATIONS
		(A)	(B)	(C)	(D)=A-B-C
	REVENUES				
100	Network Access	N/A	N/A	N/A	N/A
110	Uncollectibles	N/A	N/A	N/A	N/A
120	Common Line Support	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A
150	Miscellaneous	N/A	N/A	N/A	N/A
160	Net Revenues	N/A	N/A	N/A	N/A
	EXPENSES				
170	Plant Specific	N/A	N/A	N/A	N/A
180	Plant Non Specific excl Dep & Amort	N/A	N/A	N/A	N/A
190	Depreciation/Amortization				
200	Customer Operations	N/A	N/A	N/A	N/A
210	Access	N/A	N/A	N/A	N/A
220	Corporate Operations	N/A	N/A	N/A	N/A
230	AFUDC	N/A	N/A	N/A	N/A
240	Other Expenses and Adjustments	N/A	N/A	N/A	N/A
250	Taxes Other than FIT	N/A	N/A	N/A	N/A
260	Total Expenses and Other Taxes	N/A	N/A	N/A	N/A
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes	N/A	N/A	N/A	N/A
300	TOTAL EXPENSES AND TAXES	N/A	N/A	N/A	N/A
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig,Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation,Amortization Reserve				
390	Accum. Deferred Income Tax				
400	Other Rate Base Adjustments	N/A	N/A	N/A	N/A
	RETURN DATA				
410	Average Rate Base	N/A	N/A	N/A	N/A
420	Return	N/A	N/A	N/A	N/A
430	Rate of Return	N/A	N/A	N/A	N/A

NOTES : (1) Companies filing on a historic basis are not required to submit prospective data.
(2) Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for these companies.

Filing Entity:

TIER 2
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/90 THRU 6/91	INTERSTATE	BILLING AND COLLECTION	INTEREXCHANGE	TOTAL ROR REGULATED IS ACCESS
		(E)	(F)	(G)	(H)=E-F-G
	REVENUES				
100	Network Access	N/A	N/A	N/A	
110	Uncollectibles	N/A	N/A	N/A	
120	Common Line Support	N/A	N/A	N/A	
130	Long Term	N/A	N/A	N/A	
140	Transitional	N/A	N/A	N/A	
150	Miscellaneous	N/A	N/A	N/A	
160	Net Revenues	N/A	N/A	N/A	
	EXPENSES				
170	Plant Specific				
180	Plant Non Specific excl Dep & Amort				
190	Depreciation/Amortization				
200	Customer Oper. Services				
210	Access		N/A		N/A
220	Corporate Operations				
230	AFUDC	N/A	N/A	N/A	
240	Other Expenses and Adjustments				
250	Taxes Other than FIT				
260	Total Expenses and Other Taxes				
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes		N/A	N/A	
300	TOTAL EXPENSES AND TAXES		N/A	N/A	
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig,Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation,Amortization Reserve				
390	Accum. Deferred Income Tax				
400	Other Rate Base Adjustments				
	RETURN DATA				
410	Average Rate Base		N/A	N/A	
420	Return	N/A	N/A	N/A	
430	Rate of Return	N/A	N/A	N/A	

NOTE : Companies filing on a historic basis are not required to submit prospective data.
NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for those companies.

NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for those companies.

Filing Entity:

TIER 2
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/90 THRU 6/91	COMMON LINE PAY PHONE	INSIDE WIRE	BFP	CPE	TOTAL
		(I)	(J)	(K)	(L)	(M)=I+J+K+L
	REVENUES					
100	Network Access					
110	Uncollectibles					
120	Common Line Support					
130	Long Term					
140	Transitional					
150	Miscellaneous					
160	Net Revenues					
	EXPENSES					
170	Plant Specific					
180	Plant Non Specific excl Dep & Amort					
190	Depreciation/Amortization					
200	Customer Oper. Services					
210	Access	N/A	N/A	N/A	N/A	N/A
220	Corporate Operations					
230	AFUDC					
240	Other Expenses and Adjustments					
250	Taxes Other than FIT					
260	Total Expenses and Other Taxes					
	FIT ADJUSTMENTS					
270	Adjustments for FIT					
280	Amortized ITC					
290	Federal Income Taxes					
300	TOTAL EXPENSES AND TAXES					
	TELEPHONE PLANT IN SERVICE					
310	General Support					
320	Central Office Equipment - Switch					
330	Central Office Equipment - Trans					
340	Cable and Wire					
350	Info Orig,Term Equipment					
360	Amortizable Assets					
370	Total Plant in Service					
	ADJUSTMENTS TO TPIS					
380	Depreciation,Amortization Reserve					
390	Accum. Deferred Income Tax					
400	Other Rate Base Adjustments					
	RETURN DATA					
410	Average Rate Base					
420	Return					
430	Rate of Return					

NOTE : Companies filing on a historic basis are not required to submit prospective data.
NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for those companies.
NOTE 2: NECA carrier common line participants need only fill out column M. Companies filing company specific end user or common line rates must complete columns I thru M.

Filing Entity:

T2COS-1(P)
Page 4 of 4

TIER 2
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/90 THRU 6/91	TRAFFIC SENSITIVE					SPECIAL ACCESS
		SWITCHING	EQUAL ACCESS	TRANSPORT	INFORMATION	TOTAL	
		(N)	(O)	(P)	(Q)	(R)=N+O+P+Q	(S)
	REVENUES						
100	Network Access						
110	Uncollectibles						
120	Common Line Support	N/A	N/A	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A	N/A	N/A
150	Miscellaneous						
160	Net Revenues						
	EXPENSES						
170	Plant Specific						
180	Plant Non Specific excl Dep & Amort						
190	Depreciation/Amortization						
200	Customer Oper. Services						
210	Access	N/A	N/A	N/A	N/A	N/A	N/A
220	Corporate Operations						
230	AFUDC						
240	Other Expenses and Adjustments						
250	Taxes Other than FIT						
260	Total Expenses and Other Taxes						
	FIT ADJUSTMENTS						
270	Adjustments for FIT						
280	Amortized ITC						
290	Federal Income Taxes						
300	TOTAL EXPENSES AND TAXES						
	TELEPHONE PLANT IN SERVICE						
310	General Support						
320	Central Office Equipment - Switch						
330	Central Office Equipment - Trans						
340	Cable and Wire						
350	Info Orig,Term Equipment						
360	Amortizable Assets						
370	Total Plant in Service						
	ADJUSTMENTS TO TPIS						
380	Depreciation,Amortization Reserve						
390	Accum. Deferred Income Tax						
400	Other Rate Base Adjustments						
	RETURN DATA						
410	Average Rate Base						
420	Return						
430	Rate of Return						

NOTE : Companies filing on a historic basis are not required to submit prospective data.

Filing Entity:

T2COS-1(H)
Page 1 of 4

TIER 2
HISTORIC COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/89 THRU 12/89	TOTAL COMPANY	ADJUSTMENTS		TOTAL COMPANY SUBJECT TO SEPARATIONS
			PART 64	OTHER	
		(A)	(B)	(C)	(D)=A-B-C
	REVENUES				
100	Network Access	N/A	N/A	N/A	N/A
110	Uncollectibles	N/A	N/A	N/A	N/A
120	Common Line Support	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A
150	Miscellaneous	N/A	N/A	N/A	N/A
160	Net Revenues	N/A	N/A	N/A	N/A
	EXPENSES				
170	Plant Specific	N/A	N/A	N/A	N/A
180	Plant Non Specific excl Dep & Amort	N/A	N/A	N/A	N/A
190	Depreciation/Amortization				
200	Customer Operations	N/A	N/A	N/A	N/A
210	Access	N/A	N/A	N/A	N/A
220	Corporate Operations	N/A	N/A	N/A	N/A
230	AFUDC	N/A	N/A	N/A	N/A
240	Other Expenses and Adjustments	N/A	N/A	N/A	N/A
250	Taxes Other than FIT	N/A	N/A	N/A	N/A
260	Total Expenses and Other Taxes	N/A	N/A	N/A	N/A
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes	N/A	N/A	N/A	N/A
300	TOTAL EXPENSES AND TAXES	N/A	N/A	N/A	N/A
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig,Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation,Amortization Reserve				
390	Accum. Deferred Income Tax				
400	Other Rate Base Adjustments	N/A	N/A	N/A	N/A
	RETURN DATA				
410	Average Rate Base	N/A	N/A	N/A	N/A
420	Return	N/A	N/A	N/A	N/A
430	Rate of Return	N/A	N/A	N/A	N/A

NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that partjcipate in the NECA common line pool. These lines should be populated with zero for these companies.

Filing Entity:

T2COS-1(H)
Page 2 of 4

TIER 2
HISTORIC COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/89 THRU 12/89	INTERSTATE	BILLING AND COLLECTION	INTEREXCHANGE	TOTAL ROR REGULATED IS ACCESS
		(E)	(F)	(G)	(H)=E-F-G
	REVENUES				
100	Network Access	N/A	N/A	N/A	
110	Uncollectibles	N/A	N/A	N/A	
120	Common Line Support	N/A	N/A	N/A	
130	Long Term	N/A	N/A	N/A	
140	Transitional	N/A	N/A	N/A	
150	Miscellaneous	N/A	N/A	N/A	
160	Net Revenues	N/A	N/A	N/A	
	EXPENSES				
170	Plant Specific				
180	Plant Non Specific excl Dep & Amort				
190	Depreciation/Amortization				
200	Customer Oper. Services				
210	Access		N/A		N/A
220	Corporate Operations				
230	AFUDC	N/A	N/A	N/A	
240	Other Expenses and Adjustments				
250	Taxes Other than FIT				
260	Total Expenses and Other Taxes				
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes		N/A	N/A	
300	TOTAL EXPENSES AND TAXES		N/A	N/A	
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig.Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation,Amortization Reserve				
390	Accum. Deferred Income Tax				
400	Other Rate Base Adjustments				
	RETURN DATA				
410	Average Rate Base		N/A	N/A	
420	Return	N/A	N/A	N/A	
430	Rate of Return	N/A	N/A	N/A	

NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for those companies.

with zero for those companies.

Filing Entity:

T2COS-1(H)
Page 3 of 4

TIER 2
HISTORIC COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/89 THRU 12/89	COMMON LINE PAY PHONE	INSIDE WIRE	BFP	CPE	TOTAL
		(I)	(J)	(K)	(L)	(M)=I+J+K+L
	REVENUES					
100	Network Access					
110	Uncollectibles					
120	Common Line Support					
130	Long Term					
140	Transitional					
150	Miscellaneous					
160	Net Revenues					
	EXPENSES					
170	Plant Specific					
180	Plant Non Specific excl Dep & Amort					
190	Depreciation/Amortization					
200	Customer Oper. Services					
210	Access	N/A	N/A	N/A	N/A	N/A
220	Corporate Operations					
230	AFUDC					
240	Other Expenses and Adjustments					
250	Taxes Other than FIT					
260	Total Expenses and Other Taxes					
	FIT ADJUSTMENTS					
270	Adjustments for FIT					
280	Amortized ITC					
290	Federal Income Taxes					
300	TOTAL EXPENSES AND TAXES					
	TELEPHONE PLANT IN SERVICE					
310	General Support					
320	Central Office Equipment - Switch					
330	Central Office Equipment - Trans					
340	Cable and Wire					
350	Info Orig.Term Equipment					
360	Amortizable Assets					
370	Total Plant in Service					
	ADJUSTMENTS TO TPIS					
380	Depreciation,Amortization Reserve					
390	Accum. Deferred Income Tax					
400	Other Rate Base Adjustments					
	RETURN DATA					
410	Average Rate Base					
420	Return					
430	Rate of Return					

NOTE 1: Common Line Support information contained on lines 130 thru 150 is not applicable for companies that participate in the NECA common line pool. These lines should be populated with zero for those companies.

NOTE 2: NECA carrier common line participants need only fill out column M. Companies filing company specific end user or common line rates must complete columns I thru M.

Filing Entity:

T2COS-1(H)
Page 4 of 4

TIER 2
HISTORIC COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/89 THRU 12/89	TRAFFIC SENSITIVE					SPECIAL ACCESS
		SWITCHING	EQUAL ACCESS	TRANSPORT	INFORMATION	TOTAL	
		(N)	(O)	(P)	(Q)	(R)=N+O+P+Q	(S)
	REVENUES						
100	Network Access						
110	Uncollectibles						
120	Common Line Support	N/A	N/A	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A	N/A	N/A
150	Miscellaneous						
160	Net Revenues						
	EXPENSES						
170	Plant Specific						
180	Plant Non Specific excl Dep & Amort						
190	Depreciation/Amortization						
200	Customer Oper. Services						
210	Access	N/A	N/A	N/A	N/A	N/A	N/A
220	Corporate Operations						
230	AFUDC						
240	Other Expenses and Adjustments						
250	Taxes Other than FIT						
260	Total Expenses and Other Taxes						
	FIT ADJUSTMENTS						
270	Adjustments for FIT						
280	Amortized ITC						
290	Federal Income Taxes						
300	TOTAL EXPENSES AND TAXES						
	TELEPHONE PLANT IN SERVICE						
310	General Support						
320	Central Office Equipment - Switch						
330	Central Office Equipment - Trans						
340	Cable and Wire						
350	Info Orig,Term Equipment						
360	Amortizable Assets						
370	Total Plant in Service						
	ADJUSTMENTS TO TPIS						
380	Depreciation,Amortization Reserve						
390	Accum. Deferred Income Tax						
400	Other Rate Base Adjustments						
	RETURN DATA						
410	Average Rate Base						
420	Return						
430	Rate of Return						

Filing Entity:

T2COS-2
Page 1 of 4

ANALYSIS OF ACCESS ELEMENT COST DATA

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	TEST YEAR FORECAST 7/90 THRU 6/91						
	REVENUE REQUIREMENT						
100	Depreciation						
105	Expense Less Depreciation						
110	Taxes Less F.I.T.				N/A	N/A	N/A
115	Net Return				N/A	N/A	N/A
120	F.I.T.				N/A	N/A	N/A
125	Uncoll. Rev., I.D.C. & Other Rev. Adj.				N/A	N/A	N/A
130	Revenue Requirement				N/A	N/A	N/A
135	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
140	Telephone Plant In Service						
145	Rate Base Adjustments						
150	Depreciation Reserve						
155	Accum. Deferred Inc. Tax						
160	Net Rate Base						
	HISTORICAL PERIOD 1/89 THRU 12/89 (1)						
	REVENUE REQUIREMENT						
200	Depreciation						
205	Expense Less Depreciation						
210	Taxes Less F.I.T.						N/A
215	Net Return						N/A
220	F.I.T.						N/A
225	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
230	Revenue Requirement						N/A
235	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
240	Telephone Plant In Service						
245	Rate Base Adjustments						
250	Depreciation Reserve						
255	Accum. Deferred Inc. Tax						
260	Net Rate Base						

NOTE 1: Companies need fill out this chart only for those periods for which they have previously forecast. Thus, if this is a company's initial annual access filing, only page 1 should be completed. Similarly, if the company's initial annual access filing was made in the last filing period, only pages 1 and 2 should be completed.

NOTE 2: Annual cost companies will use their 1988 cost study factors transitioned as appropriate for 1989 with 1989 annual operating statistics. Historical data should be on the same basis as the test year forecast data.

Filing Entity:

ANALYSIS OF ACCESS ELEMENT COST DATA

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD: ANNUALIZED 4/89 THRU 12/89 (1)						
	REVENUE REQUIREMENT						
300	Depreciation						
305	Expense Less Depreciation						
310	Taxes Less F.I.T.						N/A
315	Net Return						N/A
320	F.I.T.						N/A
325	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
330	Revenue Requirement						N/A
335	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
340	Telephone Plant In Service						
345	Rate Base Adjustments						
350	Depreciation Reserve						
355	Accum. Deferred Inc. Tax						
360	Net Rate Base						
	TEST YEAR FORECAST: ANNUALIZED 4/89 THRU 12/89 (2)						
	REVENUE REQUIREMENT						
400	Depreciation						
405	Expense Less Depreciation						
410	Taxes Less F.I.T.						N/A
415	Net Return						N/A
420	F.I.T.						N/A
425	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
430	Revenue Requirement						N/A
435	Access Service Revenues						N/A
	RATE BASE						
440	Telephone Plant In Service						
445	Rate Base Adjustments						
450	Depreciation Reserve						
455	Accum. Deferred Inc. Tax						
460	Net Rate Base						

NOTE : Companies need fill out this chart only for those periods for which they have previously forecast. Thus, if this is a company's initial annual access filing, only page 1 should be completed. Similarly, if the company's initial annual access filing was made in the last filing period, only pages 1 and 2 should be completed.

NOTE 1: Annual cost companies will use their 1988 cost study factors transitioned as appropriate for 1989 with 1989 annual operating statistics. Historical data should be on the same basis as the test year forecast data.

NOTE 2: From 1989 TRP T2COS-2 (page 1 of 3)

NOTE 2: From 1989 TRP T2COS-2 (page 1 of 3)

Filing Entity:

ANALYSIS OF ACCESS ELEMENT COST DATA

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD 1/88 - 12/88 (1)						
	REVENUE REQUIREMENT						
500	Depreciation						
505	Expense Less Depreciation						
510	Taxes Less F.I.T.						N/A
515	Net Return						N/A
520	F.I.T.						N/A
525	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
530	Revenue Requirement						N/A
535	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
540	Telephone Plant In Service						
545	Rate Base Adjustments						
550	Depreciation Reserve						
555	Accum. Deferred Inc. Tax						
560	Net Rate Base						
	TEST YEAR FORECAST 1/88 - 12/88 (2)						
	REVENUE REQUIREMENT						
600	Depreciation						
605	Expense Less Depreciation						
610	Taxes Less F.I.T.						N/A
615	Net Return						N/A
620	F.I.T.						N/A
625	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
630	Revenue Requirement						N/A
635	Access Service Revenues						N/A
	RATE BASE						
640	Telephone Plant In Service						
645	Rate Base Adjustments						
650	Depreciation Reserve						
655	Accum. Deferred Inc. Tax						
660	Net Rate Base						

NOTE : Companies need fill out this chart only for those periods for which they have previously forecast. Thus, if this is a company's initial annual access filing, only page 1 should be completed. Similarly, if the company's initial annual access filing was made in the last filing period, only pages 1 and 2 should be completed.

NOTE 1: Actual Operating Statistics

NOTE 2: From 1989 TRP T2COS-2 (page 2 of 3)

Filing Entity:

ANALYSIS OF ACCESS ELEMENT COST DATA

		COMMON LINE	TRAFFIC SENSITIVE		OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUBJ TO SEPAR)
			SWITCHED	SPECIAL			
		(A)	(B)	(C)	(D)	(E)	(F)
	HISTORICAL PERIOD 1/87 - 12/87 (1)						
	REVENUE REQUIREMENT						
700	Depreciation						
705	Expense Less Depreciation						
710	Taxes Less F.I.T.						N/A
715	Net Return						N/A
720	F.I.T.						N/A
725	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
730	Revenue Requirement						N/A
735	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
740	Telephone Plant In Service						
745	Rate Base Adjustments						
750	Depreciation Reserve						
755	Accum. Deferred Inc. Tax						
760	Net Rate Base						
	TEST YEAR FORECAST 1/87 - 12/87 (2)						
	REVENUE REQUIREMENT						
800	Depreciation						
805	Expense Less Depreciation						
810	Taxes Less F.I.T.						N/A
815	Net Return						N/A
820	F.I.T.						N/A
825	Uncoll. Rev., I.D.C. & Other Rev. Adj.						N/A
830	Revenue Requirement						N/A
835	Access Service Revenues						N/A
	RATE BASE						
840	Telephone Plant In Service						
845	Rate Base Adjustments						
850	Depreciation Reserve						
855	Accum. Deferred Inc. Tax						
860	Net Rate Base						

NOTE : Companies need fill out this chart only for those periods for which they have previously forecast. Thus, if this is a company's initial annual access filing, only page 1 should be completed. Similarly, if the company's initial annual access filing was made in the last filing period, only pages 1 and 2 should be completed.

NOTE 1: Actual Operating Statistics

NOTE 2: From 1989 TRP T2COS-2 (page 3 of 3)

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	1/1/89 RATES (A)	1/1/89 RIC AMORT $ (B)	DEPRECIATION 1/1/90(1) RATES (C)	DEPRECIATION 1/1/90(1) RIC AMORT $ (D)	7/90 - 6/91 RATES (E)	7/90 - 6/91 RIC AMORT $ (F)
	RATE CATEGORIES						
100	2112 MOTOR VEHICLES						
110	2113 AIRCRAFT						
120	2115 GARAGE WORK EQPT.						
130	2116 OTHER WORK EQUIPMENT						
140	2121 BUILDINGS						
150	2122 FURNITURE						
160	2123 OFFICIAL COMM. EQPT.						
170	OFFICE SUPPORT EQPT.						
180	OFFICIAL COMM. EQPT.						
190	2124 GENERAL PURP. COMPUTERS						
200	2211 ANALOG ELEC. SWITCH						
210	2212 DIGITAL ELEC. SWITCH						
220	2215 ELECTRO MECHANICAL						
230	2220 OPERATOR SYSTEMS						
240	2231 RADIO SYSTEMS						
250	2232 CIRCUIT EQPT.						
260	ANALOG CIRCUIT EQPT.						
270	DIGITAL CIRCUIT EQPT.						
280	DIGITAL DATA SYSTEMS						
290	2351 PUBLIC TEL TERM EQPT						
300	2362 OTHER TERMINAL EQPT.						
310	TEL. & MISC.						
320	PBX - DDS						
330	PBX - OTHER						
340	2411 POLES						
350	2421 AERIAL CABLE						
360	AC - SUBSCRIBER						
370	AC - TRUNK						
380	2422 UNDERGROUND CABLE						
390	UG - SUBSCRIBER						
400	UG - TRUNK						
410	2423 BURIED CABLE						
420	2424 SUBMARINE CABLE						
430	2426 INTRABUILD. NETWORK CABLE						
440	2441 CONDUIT SYSTEMS						
450							
460							
470							
480							
490							
500	SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS	N/A		N/A		N/A	
510	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A

--------- N O T E ----------
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE
POPULATED WITH APPROPRIATE
COMPANY SPECIFIC INFORMATION

NOTE: (1) Currently prescribed rates

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	DEPRECIATION 1/1/89 RATES	DEPRECIATION 1/1/89 RIC AMORT $	DEPRECIATION 1/1/90(1) RATES	DEPRECIATION 1/1/90(1) RIC AMORT $	DEPRECIATION 7/90 - 6/91 RATES	DEPRECIATION 7/90 - 6/91 RIC AMORT $
	OTHER ACCOUNTS	(A)	(B)	(C)	(D)	(E)	(F)
520	2111 LAND	N/A	N/A	N/A	N/A	N/A	N/A
530	2321 STN CON. IW AMORT.	N/A		N/A		N/A	
540	MISC E.G., OTH AMORT. ACCTS	N/A		N/A		N/A	
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS	N/A		N/A		N/A	
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A
	ADJUSTMENTS TO TOTAL COMPANY:						
580	PART 64	N/A	N/A	N/A	N/A	N/A	N/A
590	BOC ADJUSTMENTS (E.G., SNFA, TP)	N/A	N/A	N/A	N/A	N/A	N/A
600	ICO ADJUSTMENTS (E.G., CPE)	N/A	N/A	N/A	N/A	N/A	N/A
610	TOTAL CO. SUBJECT TO SEPARATIONS	N/A		N/A		N/A	
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A

NOTE: (1) Currently prescribed rates

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER	CLASS OR SUBCLASS OF PLANT	EFFECTIVE DATE 1/1/89 RATES (G)	1/1/89 RIC AMORT $ (H)	EFFECTIVE DATE OF 1990 RATES (I)	OF 1990 RIC AMORT $ (J)	OF 1991 RATES (K)	OF 1991 RIC AMORT $ (L)
		RATE CATEGORIES						
100	2112	MOTOR VEHICLES						
110	2113	AIRCRAFT						
120	2115	GARAGE WORK EQPT.						
130	2116	OTHER WORK EQUIPMENT						
140	2121	BUILDINGS						
150	2122	FURNITURE						
160	2123	OFFICIAL COMM. EQPT.						
170		OFFICE SUPPORT EQPT.						
180		OFFICIAL COMM. EQPT.						
190	2124	GENERAL PURP. COMPUTERS						
200	2211	ANALOG ELEC. SWITCH						
210	2212	DIGITAL ELEC. SWITCH						
220	2215	ELECTRO MECHANICAL						
230	2220	OPERATOR SYSTEMS						
240	2231	RADIO SYSTEMS						
250	2232	CIRCUIT EQPT.						
260		ANALOG CIRCUIT EQPT.						
270		DIGITAL CIRCUIT EQPT.						
280		DIGITAL DATA SYSTEMS						
290	2351	PUBLIC TEL TERM EQPT						
300	2362	OTHER TERMINAL EQPT.						
310		TEL. & MISC.						
320		PBX - DDS						
330		PBX - OTHER						
340	2411	POLES						
350	2421	AERIAL CABLE						
360		AC - SUBSCRIBER						
370		AC - TRUNK						
380	2422	UNDERGROUND CABLE						
390		UG - SUBSCRIBER						
400		UG - TRUNK						
410	2423	BURIED CABLE						
420	2424	SUBMARINE CABLE						
430	2426	INTRABUILD. NETWORK CABLE						
440	2441	CONDUIT SYSTEMS						
450								
460								
470								
480								
490								
500		SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS	N/A	N/A	N/A	N/A	N/A	N/A
510		SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A

--- N O T E ---
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE POPULATED WITH APPROPRIATE COMPANY SPECIFIC INFORMATION

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	EFFECTIVE DATE 1/1/89 RATES	1/1/89 RIC AMORT $	EFFECTIVE DATE OF 1990 RATES	OF 1990 RIC AMORT $	EFFECTIVE DATE OF 1991 RATES	OF 1991 RIC AMORT $
	OTHER ACCOUNTS	(G)	(H)	(I)	(J)	(K)	(L)
520	2111 LAND	N/A	N/A	N/A	N/A	N/A	N/A
530	2321 STN CON. IW AMORT.	N/A		N/A		N/A	
540	MISC E.G., OTH AMORT. ACCTS	N/A	N/A	N/A	N/A	N/A	N/A
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS	N/A	N/A	N/A	N/A	N/A	N/A
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A
	ADJUSTMENTS TO TOTAL COMPANY:						
580	PART 64	N/A	N/A	N/A	N/A	N/A	N/A
590	BOC ADJUSTMENTS (E.G., SNFA, TP)	N/A	N/A	N/A	N/A	N/A	N/A
600	ICO ADJUSTMENTS (E.G., CPE)	N/A	N/A	N/A	N/A	N/A	N/A
610	TOTAL CO. SUBJECT TO SEPARATIONS	N/A	N/A	N/A	N/A	N/A	N/A
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER	CLASS OR SUBCLASS OF PLANT	PLT IN SVC A/O 1/1/89	PLT IN SVC A/O 1/1/90	PLT IN SVC A/O 7/1/90	PLT IN SVC A/O 7/1/91	7/1/90 TO 6/30/91 TEST PERIOD ESTIMATED AVERAGE PLANT BALANCES	7/1/90 - 6/30/91 TEST PERIOD ESTIMATED EFFECT DUE TO DEPR EXP	AMORT $	TOTAL
		RATE CATEGORIES	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)=R+S
100	2112	MOTOR VEHICLES								
110	2113	AIRCRAFT								
120	2115	GARAGE WORK EQPT.								
130	2116	OTHER WORK EQUIPMENT								
140	2121	BUILDINGS								
150	2122	FURNITURE								
160	2123	OFFICIAL COMM. EQPT.								
170		OFFICE SUPPORT EQPT.								
180		OFFICIAL COMM. EQPT.								
190	2124	GENERAL PURP. COMPUTERS								
200	2211	ANALOG ELEC. SWITCH								
210	2212	DIGITAL ELEC. SWITCH								
220	2215	ELECTRO MECHANICAL								
230	2220	OPERATOR SYSTEMS								
240	2231	RADIO SYSTEMS								
250	2232	CIRCUIT EQPT.								
260		ANALOG CIRCUIT EQPT.								
270		DIGITAL CIRCUIT EQPT.								
280		DIGITAL DATA SYSTEMS								
290	2351	PUBLIC TEL TERM EQPT								
300	2362	OTHER TERMINAL EQPT.								
310		TEL. & MISC.								
320		PBX - DDS								
330		PBX - OTHER								
340	2411	POLES								
350	2421	AERIAL CABLE								
360		AC - SUBSCRIBER								
370		AC - TRUNK								
380	2422	UNDERGROUND CABLE								
390		UG - SUBSCRIBER								
400		UG - TRUNK								
410	2423	BURIED CABLE								
420	2424	SUBMARINE CABLE								
430	2426	INTRABUILD. NETWORK CABLE								
440	2441	CONDUIT SYSTEMS								
450										
460										
470										
480										
490										
500		SUB TOTAL: TOTAL CO. DEPRECIABLE ACCOUNTS								
510		SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A		N/A	

--------- N O T E ----------
ILLUSTRATIVE RATE CATEGORIES

RATE CATEGORIES WILL BE
POPULATED WITH APPROPRIATE
COMPANY SPECIFIC INFORMATION

FILING ENTITY: ANY COMPANY

TOTAL COMPANY (SUBJECT TO SEPARATIONS)
DEPRECIATION INFORMATION ANALYSIS

	ACCOUNT NUMBER CLASS OR SUBCLASS OF PLANT	PLT IN SVC A/O 1/1/89	PLT IN SVC A/O 1/1/90	PLT IN SVC A/O 7/1/90	PLT IN SVC A/O 7/1/91	7/1/90 TO 6/30/91 TEST PERIOD ESTIMATED AVERAGE PLANT BALANCES	7/1/90 - 6/30/91 TEST PERIOD ESTIMATED EFFECT DUE TO DEPR EXP	AMORT $	TOTAL
	OTHER ACCOUNTS	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)=R+S
520	2111 LAND						N/A	N/A	N/A
530	2321 STN CON. IW AMORT.						N/A		
540	MISC E.G., OTH AMORT. ACCTS						N/A		
560	SUB TOTAL: TOTAL CO. PRIOR TO ADJUSTMENTS								
570	SUB TOTAL: COMPOSITE DEPR. RATE	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	ADJUSTMENTS TO TOTAL COMPANY:								
580	PART 64								
590	BOC ADJUSTMENTS (E.G., SNFA, TP)								
600	ICO ADJUSTMENTS (E.G., CPE)								
610	TOTAL CO. SUBJECT TO SEPARATIONS								
620	COMPOSITE DEPRECIATION RATES	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

FILING ENTITY:

T2DMD-1
Page 1 of 3

TIER 2 ACCESS DEMAND
COMMON LINE

	HISTORIC PERIOD	PREMIUM CCL MOU ORIG. (A)	PREMIUM CCL MOU TERM. (B)	PREMIUM CCL MOU TOTAL (C) = A+B	NON-PREMIUM CCL MOU ORIG. (D)	NON-PREMIUM CCL MOU TERM. (E)	NON-PREMIUM CCL MOU TOTAL (F) = D+E
100	3Q86						
110	4Q86						
120	1Q87						
130	2Q87						
140	3Q87						
150	4Q87						
160	1Q88						
170	2Q88						
180	3Q88						
190	4Q88						
200	1Q89						
210	2Q89						
220	3Q89						
230	4Q89						
240	PYCOS PERIOD (1/89 THRU 12/89)						
250	PROSPECTIVE PERIOD (7/90 THRU 6/91)						

FILING ENTITY:

TIER 2 ACCESS DEMAND
COMMON LINE

	HISTORIC PERIOD	TOTAL CCL MOU ORIG. (G) = A+D	TOTAL CCL MOU TERM. (H) = B+E	TOTAL CCL MOU TOTAL (I) = C+F	TOTAL CHARGEABLE CCL MOU ORIG. (J) = A+(D*.45)	TOTAL CHARGEABLE CCL MOU TERM. (K) = B+(E*.45)
100	3Q86					
110	4Q86					
120	1Q87					
130	2Q87					
140	3Q87					
150	4Q87					
160	1Q88					
170	2Q88					
180	3Q88					
190	4Q88					
200	1Q89					
210	2Q89					
220	3Q89					
230	4Q89					
240	PYCOS PERIOD (1/89 THRU 12/89)					
250	PROSPECTIVE (7/90 THRU 6/91)					

FILING ENTITY:

T2DMD-1
Page 3 of 3

TIER 2 ACCESS DEMAND
TRAFFIC SENSITIVE

	HISTORIC PERIOD	PREMIUM (A)	NON-PREMIUM (B)	TOTAL (C)	TOTAL CHARGEABLE (D)=A+(B*.45)
300	3Q86				
310	4Q86				
320	1Q87				
330	2Q87				
340	3Q87				
350	4Q87				
360	1Q88				
370	2Q88				
380	3Q88				
390	4Q88				
400	1Q89				
410	2Q89				
420	3Q89				
430	4Q89				
440	PYCOS PERIOD (1/89 THRU 12/89)				
450	PROSPECTIVE PERIOD (7/90 THRU 6/91)				

Filing Entity:

T2DMD-2
Page 1 of 1

TIER 2 SPECIAL ACCESS DEMAND COMPARISON

	CHANNEL TERMINATION	HISTORICAL 1/89 thru 12/89 (A)	PROSPECTIVE 7/90 thru 6/91 (B)
100	Metallic		
110	Telegraph		
120	Voice Grade (excl. WATS)		
130	WATS		
140	Audio Program (Full Time)		
150	High Capacity		

	CIRCUIT AND MILEAGE	HISTORICAL 1/89 - 12/89		PROSPECTIVE 7/90 - 6/91	
		CKTS (A)	IOM (B)	CKTS (C)	IOM (D)
160	Metallic				
170	Telegraph				
180	Voice Grade (excl. WATS)				
190	WATS				
200	Audio Program (Full Time) (excl. WATS)				
210	High Capacity				

NOTE: Circuit counts represent average in-service counts for the period.

Filing Entity:

T2DMD-3
Page 1 of 1

TIER 2 COMMON LINE DEMAND AND REVENUE

		HISTORICAL 1/89 - 12/89		PROSPECTIVE 7/90 - 6/91	
		REVENUE	MOU OR LINES	REVENUE	MOU OR LINES
		(A)	(B)	(C)	(D)
100	Total End User Charges		N/A		N/A
110	Residence				
120	Single Line Business				
130	Multiline Business				
140	Special Access Surcharges				
150	Carrier Common Line (1)				
160	Total Common Line Revenues		N/A		N/A

NOTE : This chart is not applicable to companies that participate in the NECA CCL pool.

NOTES: (1) Row 150 Cols A and B should be populated with data reflecting NECA January 1990 view.

Filing Entity:

T2DMD-4
Page 1 of 1

MINUTES OF USE DEMAND COMPARISON

(MINUTES IN THOUSANDS)

		COMMON LINE MOU (A)	TRAFFIC SENSITIVE MOU (B)
100	Prospective 7/90 thru 6/91		
110	PYCOS Period 1/89 thru 12/89		
120	Historical 4/89 thru 12/89 (Annualized) (1)		
130	Prospective 4/89 - 12/89 (Annualized) (2)		
140	Historical 1/88 - 12/88 (1)		
150	Prospective 1/88 -12/88 (2)		
160	Historical 1987 (1)		
170	Prospective 1987 (2)		

NOTES: (1) Actual Operating Statistics
(2) From 1988 TRP T2DMD-1

NOTE : Companies filing their initial filing are not required to complete this form. Companies participating in the NECA carrier common line pool should populate column A with zero (0).

FILING ENTITY:

TIER 2 SWITCHED AND SPECIAL ACCESS RATE ANALYSIS

		12/31/89 RATE	1/1/90 RATE	CURRENTLY EFFECTIVE RATE	PROPOSED 7/1/90 RATE	PROPOSED TO 1/1/90 % CHANGE	PROPOSED TO CURRENT % CHANGE
		(A)	(B) (NOTE 1)	(C) (NOTE 2)	(D)	(E)=((D-B)/B)*100	(F)=((D-C)/C)*100
	A. SWITCHED ACCESS RATES						
110	Premium CCL Terminating Rate, Cents Per Minute						
120	Non-Premium Terminating CCL Rate, Cents Per Minute						
130	Premium Switching Rate, (Average) Cents Per Minute						
140	Non-Premium Switching Rate, (Average) Cents Per Minute						
150	Premium Local Transport Rate, (Average) Cents Per Minute						
160	Non-Premium Local Transport Rate, (Average) Cents Per Minute						
170	Equal Access Per _____						
180	Non-Recurring Charge Per _____						
	B. END USER CHARGES						
190	Multiline Business						
200	Residence and Single-Line Bus.						
	SPECIAL ACCESS						
210	2-Wire Voice Grade, Dollars Per Circuit (Modal Band Transport)						
220	4-Wire Voice Grade, Dollars Per Circuit (Modal Band Transport)						

NOTE 1: Effective rates resulting from the December 1989 Orders. Companies filing for the first time should leave blank.

NOTE 2: If current rates in Col C differ from Col B, exchange carriers should indicate in a footnote the effective date of the Col C rate.

NOTE : Companies filing for the first time are not required to submit this form.
NOTE : NECA carrier common line companies do not have to complete lines 110 and 120.

FILING ENTITY:

T2RTE - 2
Page 1 of 1

ANNUALIZED ACCESS PRICEOUT COMPARISONS

		Revenue at 12/31/89 Rate	Revenue at 1/1/90 Rate	Change (B)-(A)	Revenue at Currently Effective Rate	Change (D)-(B)	Revenue at Proposed Rate 7/1/90	Change (F)-(D)
		(A)	(B)	(C)=B-A	(D)	(E)	(F)	(G)=F-D
100	Multi-Line Business							
110	Residence and Single-Line Business							
120	CCL							
130	Switching							
140	Local Transport							
150	Information							
160	Equal Access							
170	Special Access							

NOTES:

(1) Projected demand quantities for the test year, 7/90 thru 6/91, should be uniformly applied to different rate schedules to obtain price-outs.

(2) All non-recurring charges should be included. EA should also be included.

(3) Companies filing for the first time are not required to prepare this form.

(4) Companies participating in the NECA CCL pool are not required to complete line 130.

(5) Companies participating in the NECA EU pool are not required to complete lines 100 thru 120.

FILING ENTITY: ANY COMPANY

	COSAS FOR WHICH RATES ARE AVERAGED		
	MULTILINE BUSINESS	RESIDENCE AND SINGLE-LINE BUS.	CCL
	(A)	(B)	(C)
100			
101			
102			
103			
104			
105			
106			
107			
108			
109			
110			
112			
113			
114			
115			
116			
117			
118			
119			
120			
121			
122			
123			
124			
125			
126			
127			
128			
129			
130			

NOTE: Companies should list in the appropriate column all COSAs for which rates in that column are averaged or pooled.

FILING ENTITY: ANY COMPANY

	COSAS FOR WHICH RATES ARE AVERAGED				
	SWITCHING	LOCAL TRANSPORT	INFORMATION	EQUAL ACCESS	SPECIAL ACCESS
	(D)	(E)	(F)	(G)	(H)
100					
101					
102					
103					
104					
105					
106					
107					
108					
109					
110					
112					
113					
114					
115					
116					
117					
118					
119					
120					
121					
122					
123					
124					
125					
126					
127					
128					
129					
130					

NOTE: Companies should list in the appropriate column all COSAs for which rates in that column are averaged or pooled.

Filing Entity:

T2ERN-1
Page 1 of 1

RATE OF RETURN COMPARISON

		1/89 - 12/89 (A)	ANNUALIZED 4/89 - 12/89 (B)	PROSPECTIVE 7/90 - 6/91 (C)
100	Common Line			
110	Traffic Sensitive Switched			
120	Switching			
130	Local Transport			
140	Information			
150	Equal Access			
160	Traffic Sensitive - Special			
170	Traffic Sensitive - Total			
180	Total Rate of Return Regulated IS Access			

NOTES:

GENERAL - Companies should list all proposed rate affecting tariff revisions for the historic periods and provide Transmittal number, filing date, requested changes, action taken, and effective date, if applicable, in a footnote.

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SWITCHED ACCESS

		MILEAGE BAND		RATES PER			RATE MAKING DEMAND PER			ANTICIPATED REVENUE	REVENUE REQUIREMENT
		LOW	HIGH	MIN/MSG	MIN MILE	LINE OR TRK	MIN/MSG	MIN MILE	LINE OR TRK		
	COMMON LINE	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)(NOTE 1)	(J)
100	Multiline Business EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
110	Single Line Bus. EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
120	Centrex EUCL (Pre 7/83)	N/A	N/A	N/A	N/A		N/A	N/A			N/A
130	Residence EUCL	N/A	N/A	N/A	N/A		N/A	N/A			N/A
140	Sp. Access Line Surchrge	N/A	N/A	N/A	N/A		N/A	N/A			N/A
150	Terminating CCL Premium	N/A	N/A		N/A	N/A		N/A	N/A		N/A
160	Terminating CCL NonPrem	N/A	N/A		N/A	N/A		N/A	N/A		N/A
170	Originating CCL Premium	N/A	N/A		N/A	N/A		N/A	N/A		N/A
180	Originating CCL NonPrem	N/A	N/A		N/A	N/A		N/A	N/A		N/A
190	Common Line - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	INFORMATION										
200	Information - Per Msg.	N/A	N/A		N/A	N/A		N/A	N/A		N/A
210	Information - Per Min.	N/A	N/A		N/A	N/A		N/A	N/A		N/A
220	Information - Surcharge	N/A	N/A		N/A			N/A	N/A		N/A
230	Information - Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
240	Information - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	SWITCHING										
250	Premium Switching	N/A	N/A		N/A	N/A		N/A	N/A		N/A
260	Non-Prem Switching	N/A	N/A		N/A	N/A		N/A	N/A		N/A
270	Other Switching	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
280	Switching - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

NOTES:

1 - Col. I = C*F or D*G or E*N except Rows 190, 270, 280, 340 and 350 where:
Row 190 Col. I = Sum (Rows 100 thru 180)
Row 240 Col. I = Sum.(Rows 200 thru 230)
Row 270 Col. I = Input Value
Row 280 Col. I = Sum (Rows 250 thru 270)
Row 340 Col. I = Input Value
Row 350 Col. I = Sum (Rows 290 thru 340)

2 - Common Line and End User rate information is required for only those companies which file company specific CCL and/or EU rates.

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SWITCHED ACCESS

		MILEAGE BAND		RATES PER			RATE MAKING DEMAND PER			ANTICIPATED REVENUE	REVENUE REQUIREMENT
		LOW	HIGH	MIN/MSG	MIN MILE	LINE OR TRK	MIN/MSG	MIN MILE	LINE OR TRK		
	PREMIUM LOCAL TRANSPORT	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)(NOTE 1)	(J)
290	Local Trans. - MB1				N/A	N/A		N/A	N/A		N/A
291	Local Trans. - MB2				N/A	N/A		N/A	N/A		N/A
292	Local Trans. - MB3				N/A	N/A		N/A	N/A		N/A
293	Local Trans. - MB4				N/A	N/A		N/A	N/A		N/A
294	Local Trans. - MB5				N/A	N/A		N/A	N/A		N/A
295	Local Trans. - MB6				N/A	N/A		N/A	N/A		N/A
296	Local Trans. - MB7				N/A	N/A		N/A	N/A		N/A
297	Local Trans. - MB8				N/A	N/A		N/A	N/A		N/A
298	Local Trans. - MB9				N/A	N/A		N/A	N/A		N/A
299	Local Trans. - MB10				N/A	N/A		N/A	N/A		N/A
300	MMUC Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
301	Termination	N/A	N/A		N/A	N/A		N/A	N/A		N/A
302	Facility	N/A	N/A	N/A		N/A	N/A		N/A		N/A
	NON-PREMIUM LOCAL TRANSPORT										
310	Local Trans. - MB1				N/A	N/A		N/A	N/A		N/A
311	Local Trans. - MB2				N/A	N/A		N/A	N/A		N/A
312	Local Trans. - MB3				N/A	N/A		N/A	N/A		N/A
313	Local Trans. - MB4				N/A	N/A		N/A	N/A		N/A
314	Local Trans. - MB5				N/A	N/A		N/A	N/A		N/A
315	Local Trans. - MB6				N/A	N/A		N/A	N/A		N/A
316	Local Trans. - MB7				N/A	N/A		N/A	N/A		N/A
317	Local Trans. - MB8				N/A	N/A		N/A	N/A		N/A
318	Local Trans. - MB9				N/A	N/A		N/A	N/A		N/A
319	Local Trans. - MB10				N/A	N/A		N/A	N/A		N/A
320	MMUC Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
321	Termination	N/A	N/A		N/A	N/A		N/A	N/A		N/A
322	Facility	N/A	N/A	N/A		N/A	N/A		N/A		N/A
330	Transport Installation Per Line Or Trunk	N/A	N/A	N/A	N/A		N/A	N/A			N/A
340	Other Transport	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A
350	Local Trans. - Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		

NOTES:

1 - Col. I = C*F or D*G or E*N except Rows 190, 270, 280, 340 and 350 where:
Row 190 Col. I = Sum (Rows 100 thru 180)
Row 240 Col. I = Sum (Rows 200 thru 230)
Row 270 Col. I = Input Value
Row 280 Col. I = Sum (Rows 250 thru 270)
Row 340 Col. I = Input Value
Row 350 Col. I = Sum (Rows 290 thru 340)

2 - Row 330 represents a composite switched NRC if installation rates vary among services.

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION - SPECIAL ACCESS
(MINUTES AND REVENUES IN THOUSANDS)

		MILEAGE BAND		RATES		RATE MAKING DEMAND		ANTICIPATED
		LOW	HIGH	FIXED	PER UNIT	FIXED Q	VAR UNITS	REVENUE
	VOICE GRADE	(A)	(B)	(C)	(D)	(E)	(F)	(G)=(C*E)+(D*F)
360	Chan Term - 2 Wire	N/A	N/A	N/A		N/A		
370	Chan Term - 4 Wire	N/A	N/A	N/A		N/A		
	INTER-OFFICE MILEAGE							
380	Voice Grade - MB1							
381	Voice Grade - MB2							
382	Voice Grade - MB3							
383	Voice Grade - MB4							
384	Voice Grade - MB5							
385	Voice Grade - MB6							
386	Voice Grade - MB7							
387	Voice Grade - MB8							
388	Voice Grade - MB9							
389	Voice Grade - MB10							
390	Voice Grade - Total	N/A	N/A	N/A	N/A	N/A	N/A	
400	Non-Recurring	N/A	N/A	N/A	N/A	N/A	N/A	
	HIGH CAPACITY							
410	Channel Termination	N/A	N/A	N/A		N/A		
	INTER-OFFICE MILEAGE							
420	High Capacity - MB1							
421	High Capacity - MB2							
422	High Capacity - MB3							
423	High Capacity - MB4							
424	High Capacity - MB5							
425	High Capacity - MB6							
426	High Capacity - MB7							
427	High Capacity - MB8							
428	High Capacity - MB9							
429	High Capacity - MB10							
430	High Capacity - Total	N/A	N/A	N/A	N/A	N/A		
440	Non-Recurring	N/A	N/A	N/A	N/A	N/A		

NOTES:
1 - Row 440 represents a composite switched NRC if installation rates vary among services.

FILING ENTITY: ANY COMPANY

TEST PERIOD 7/90 TO 6/91 ACCESS REVENUE
(REVENUES IN THOUSANDS)

Classifications	Traffic Sensitive					Special Access	Total Access
	Switching	Equal Access	Transport	Information	Total		
Revenues	(A)	(B)	(C)	(D)	(E)	(F)	(G) = E + F
100 Network Access							
110 Nonrecurring Charges excl ICBs							
120 Recurring Charges excl ICBs							
130 Individual Case Basis Rates							

FILING ENTITY: ANY COMPANY

T2SEP - 1
Page 1 of 1

REVENUE REQUIREMENT EFFECT OF BASIC STUDIES EFFECTIVE ON 7/1/90

	BASIC STUDIES	BFP (A)	PAYPHONE (B)	INSIDE WIRE (C)	TS-SWITCHING (D)	TS-LOCAL TRANSPORT (E)	TS-EQUAL ACCESS (F)	TS-INFORMATION (G)	SPECIAL ACCESS (H)
100									
110									
120									
130									
140									
150									
160									
170									
180									
190									
200									
210									
220									
230									
240	Total								

NOTE: Because of possible interaction effects, row 240 will not necessarily be the sum of all rows.

1572

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